



AGENDA

Regular Meeting of the Board of Directors of San Diego Community Power (SDCP)

October 26, 2023
5:00 p.m.

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

Alternate Location:
1122 7th Street, Sacramento, CA 96814

The meeting will be held in person at the above date, time and location. Board of Directors Members and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, SDCP provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

Note: Any member of the public may provide comments to the Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board of Directors as a whole through the Chair. Comments may be provided in one of the following manners:

1. Providing Oral Comments During Meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this [Web Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted

comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar <https://zoom.us/j/94794075133>

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may provide a comment in either manner described above.

CONSENT CALENDAR

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Calendar for discussion. A member of the public may comment on any item on the Consent Calendar in either manner described above.

- 1. Approval of September 28, 2023 Meeting Minutes**
- 2. Receive and File Treasurer's Report for Period Ending August 31, 2023**
- 3. Receive and File Update on Programs**
- 4. Receive and File Update on Power Services**
- 5. Receive and File Update on Human Resources**
- 6. Receive and File Update on Customer Operations**
- 7. Receive and File Update on Marketing and Public Relations**
- 8. Receive and File Update on Community Advisory Committee**
- 9. Receive and File Update on Legislative and Regulatory Affairs**
- 10. Approval of Ascend Analytics Pilot Extension Agreement for PowerSIMM Pilot Support Services for \$50,000 through December 31, 2023**

- 11. Approval of 10-year, 6MW Resource Adequacy Agreement with EnerSmart Alpine BESS LLC and authorize the CEO to execute the Agreement**
- 12. Approval of SDCP New Alternate to the La Mesa Environmental Sustainability Commission**
- 13. Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$550,000 for Legal Services for Power Procurement through December 31, 2023**

REGULAR AGENDA

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

14. Update on Fiscal Year End 2023 Financial Audit Progress Report

Recommendation: Receive and File Fiscal Year End 2023 Financial Audit Progress Report

15. Update on Regional Energy Network (REN) Progress

Recommendation: Receive and File the Update on Regional Energy Network (REN) Progress

16. Approval of the Net Billing Tariff

Recommendation: Approve the Net Billing Tariff

17. Approval of Updates to the Existing Net Energy Metering (NEM) Tariff

Recommendation: Approve the Updates to the Existing Net Energy Metering Tariff

18. Update on Local Distributed Infill Plan

Recommendation: Receive and File the update on Local Distributed Infill Plan

19. Approval of the NextEra Desert Sands Standalone Storage Energy Storage Services Agreement (ESSA)

Recommendation: Approve a 20-Year NextEra Desert Sands Standalone Storage Energy Storage Services Agreement (ESSA) with Desert Sands Energy Storage II, LLC for a 60 MW/480 MWh (8-hour) battery storage project.

20. Approval of the Pattern SunZia Power Purchase Agreement (PPA)

Recommendation: Approve a 15-Year Pattern SunZia Power Purchase Agreement (PPA) with SunZia Wind PowerCo LLC for a 150 MW portion of an approximately 3,500 MW SunZia Wind project.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

SDCP Management and General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below,

but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at info@sdcommunitypower.org or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at San Diego Community Power, 2488 Historic Decatur Road, Suite 250, San Diego, CA 92106. Please contact info@sdcommunitypower.org to arrange an appointment.



**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

MINUTES
September 28, 2023

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:02 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

ABSENT: Vice Chair Lawson-Remer (County of San Diego),

Also Present: Chief Executive Officer ("CEO") Burns, General Counsel Norvell, Executive Assistant to the Chief Executive Officer/ Board Clerk Isley

PLEDGE OF ALLEGIANCE

Chair LaCava (City of San Diego) led the Pledge of Allegiance followed by a Land Acknowledgment honoring the original inhabitants of this land—the Kumeyaay.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava (San Diego) provided a land acknowledgement and then introduced the following new SDCP staff members:

Adana Martinez, Public Outreach Coordinator

Jushaun Jamieson, Public Outreach Coordinator

Emily Fisher, Senior Program Manager

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no items added, withdrawn, or reordered on the agenda.

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

(Items 1 through 15)

1. Approval of August 24, 2023 Meeting Minutes

Approved.

2. Receive and File Treasurer's Report for Period Ending June 30, 2023

Received and filed.

3. Receive and File Treasurer's Report for Period Ending July 31, 2023

Received and filed.

4. Receive and File Update on Programs

Received and filed.

5. Receive and File Update on Power Services

Received and filed.

6. Receive and File Update on Human Resources

Received and filed.

7. Receive and File Update on Customer Operations

Received and filed.

8. Receive and File Update on Marketing and Public Relations

Received and filed.

9. Receive and File Update on Community Advisory Committee

Received and filed.

10. Receive and File Update on Legislative and Regulatory Affairs

Received and filed.

11. Approve Resolution 2023-XX Adopting the 2024 Board Meeting Schedule

Approved.

12. Approval of Updated Letter of Intent with SDEEC LLC (dba San Diego Energy Equity Campus at Valencia Park) for Potential Lease Agreement

Approved.

13. Approval of Sublease Agreement with Corelation, Inc.

Approved.

14. Approval of Third Amendment to Professional Services Agreement with Brentech Inc. for up to \$112,360 for Computer and Information Technology Services through June 30, 2024.

Approved.

15. Approval of the Professional Services Agreement with San Diego Foundation for up to \$450,000 for Program Administration Services for the Community Grant Program through July 30, 2027.

Approved.

Public Comment

Jim Whalen expressed his strong support on item number 5 and for SDCP's foray into infill procurement, especially the exciting possibilities for deployment of rooftop solar at scale.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve Consent Calendar Items 1 through 15. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

REGULAR AGENDA

16. Approval of Recommendation of In-House General Counsel

Karin Burns, CEO gave a presentation on the In-House General Counsel findings, gave an overview of the general counsel recommendation, discussed the recruiting process, gave a financial analysis, including an overview of the benefits of hiring an In-House General Counsel.

Director Hinze nominated Board Member Parent and Chair LaCava to be on the ad hoc recruitment committee.

Chair LaCava shared that Supervisor Lawson-Remer also volunteered to be on the ad hoc recruitment committee.

Board questions and comments ensued.

ACTION: Motioned by Director Yamane (National City) and seconded by Director Parent (La Mesa) to approve the recommendation of In-House General Counsel and consider appointing an ad hoc recruitment committee. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

Chair LaCava appointed Board Member Parent, Vice Chair Lawson-Remer, and himself to the ad hoc recruitment committee.

17. Approval of Resource Adequacy Agreement with EnerSmart

Kenny Key, Senior Contract Manager provided a PowerPoint presentation on EnerSmart, a local developer and gave an overview on the EnerSmart resource adequacy agreements, key terms, staff analysis, workforce development and community benefits.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Parent (La Mesa) to approve the five proposed 10-year Resource Adequacy Agreements with EnerSmart's subsidiaries. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista) , Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CEO Burns reported on SDCP's ongoing efforts, open positions at SDCP, and shared about recent activities and events. There were no reports from general counsel.

DIRECTOR COMMENTS

Directors shared upcoming events and thanked SDCP employees for their great work.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 5:32 p.m.

Kimberly Isley, Clerk of the Board

Prepared by:
Sandra Vences, Deputy Clerk



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Review of Treasurer's Report for Period Ending 8/31/23
Date: October 26, 2023

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending 8/31/23.

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared its preliminary year-to-date financial statements for the period ended August 31, 2023, along with budgetary comparisons. Audited financials for the period ending June 30, 2023 are expected to be available for review in the November 2023 meeting of the Financial and Risk Management Committee (FRMC).

SDCP additionally reports monthly metrics during its Board meetings as part of its Update on Back-Office Operations. As part of the Treasurer's Report, certain key metrics related to risk are to be presented during Financial and Risk Management Committee (FRMC) meetings.

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 08/31/23: \$345.32 million in net operating revenues were reported compared to \$342.88 million budgeted for the period. \$214.07 million in total expenses were reported (including \$208.79 million in energy costs) compared to \$194.24 million budgeted for the period (including \$183.43 million budgeted for energy costs). After expenses, SDCP's change in net position of \$131.25 million was reported for Fiscal Year 2023. The following is a summary of the actual results compared to the Fiscal Year 2023 Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY24 as of 08/31/23 (2 mos)	FY24 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 345,321,525	\$ 342,884,273	\$ 2,437,252	101%	
Total Expenses	\$ 214,073,840	\$ 194,238,450	\$ 19,835,390	110%	
Change in Net Position	\$ 131,247,685	\$ 148,645,823	\$ (17,398,138)	-12%	

- Net operating revenues finished \$2.44 million (or 1.0 percentage points) over the budget and met expected projections.
- Operating expenses finished \$19.84 million (or 10.0 percentage points) over the budget primarily due to higher-than-expected energy costs related to resource adequacy and renewables.

Financial results for the period underperformed the projections presented in the year-to-date proforma. SDCP's change in net position was -12% under the projection primarily due to actual energy costs being higher than projected.

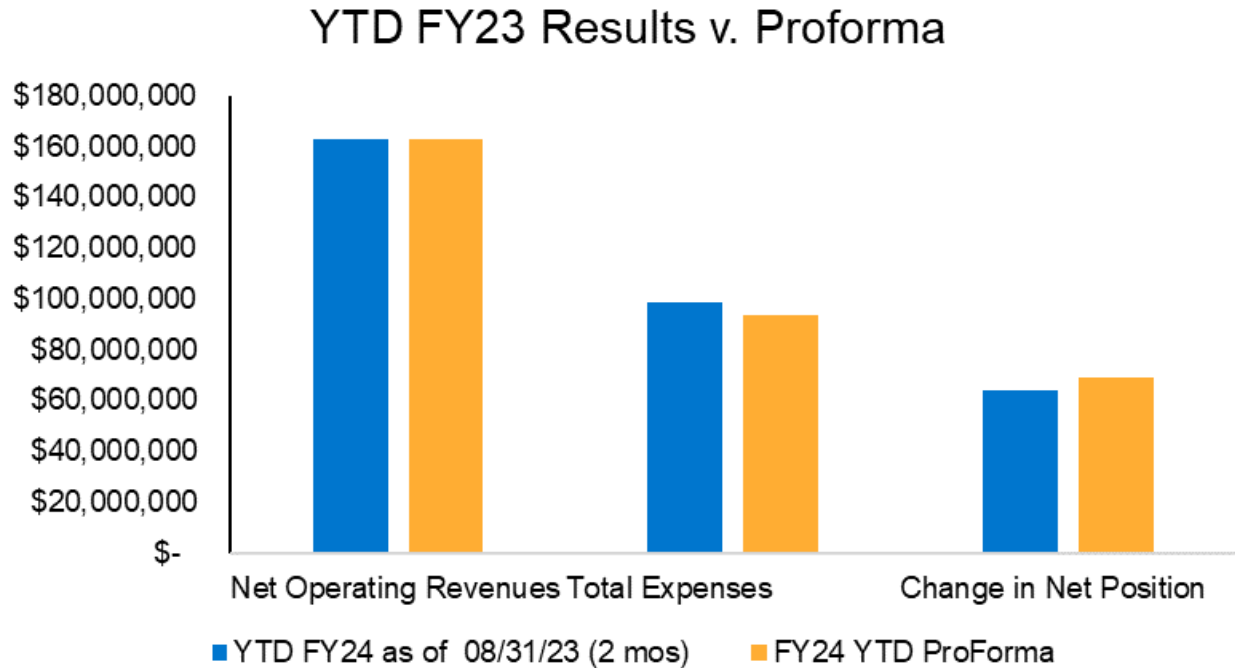
The following is a summary to actual results compared to the fiscal year-to-date proforma.

Table 2: Proforma Comparison Versus Actual Results

Proforma Comparison					
	YTD FY24 as of 08/31/23 (2 mos)	FY24 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 345,321,525	\$ 342,884,273	\$ 2,437,252	1%	
Total Expenses	\$ 214,073,840	\$ 193,931,678	\$ 20,142,162	10%	
Change in Net Position	\$ 131,247,685	\$ 148,952,595	\$ (17,704,910)	-12%	

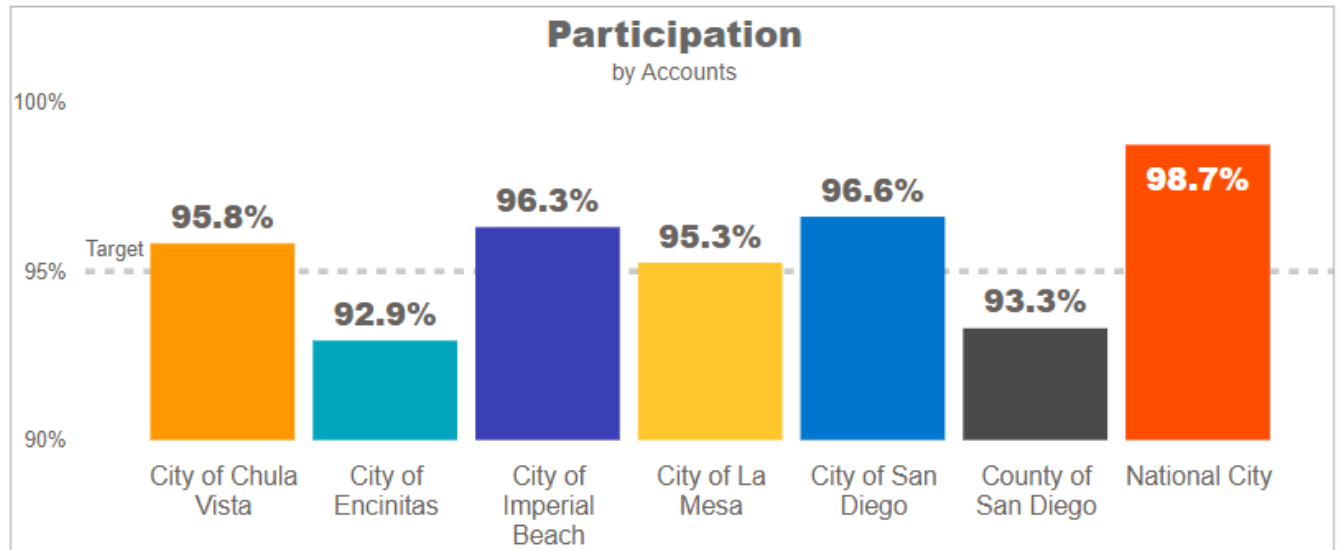


Figure 1: Proforma versus Actual Results



For the period ending 08/31/23, SDCP contributed \$131,247,685 to its reserves but was expected to gain \$148,645,823 per the FY 2023-24 adopted budget. Total SDCP reserves at the end of the period were \$314,723,952 and total available liquidity (including lines of credit) was \$443,993,952. SDCP has a total FY 2023-24 year-end reserve target of \$491,079,452, which is equivalent to 180-days of total operating expenses as set in SDCP's Reserve Policy and Strategic Goals.

Figure 2: Participation Rates



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,420	97,488	4,068	95.8%
City of Encinitas	26,449	28,456	2,007	92.9%
City of Imperial Beach	10,543	10,947	404	96.3%
City of La Mesa	28,062	29,460	1,398	95.3%
City of San Diego	599,089	620,065	20,976	96.6%
County of San Diego	145,553	174,425	11,665	93.3%
National City	18,355	19,032	238	98.7%
Total	921,471	979,873	40,756	95.8%

Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May, 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM) customers from April 2023 through March 2024. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting State of SDCP Arrearages directly related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. Below arrearage data is SDCP's Receivables aged 120+ Days as of 10/12/2023.

Figure 3: State of SDCP Arrearages

Balances over 120 days

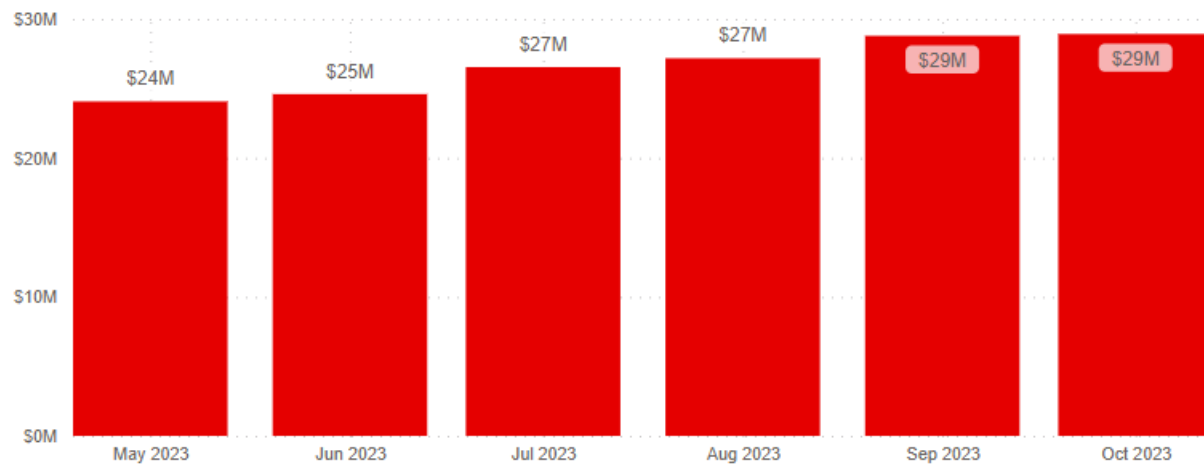
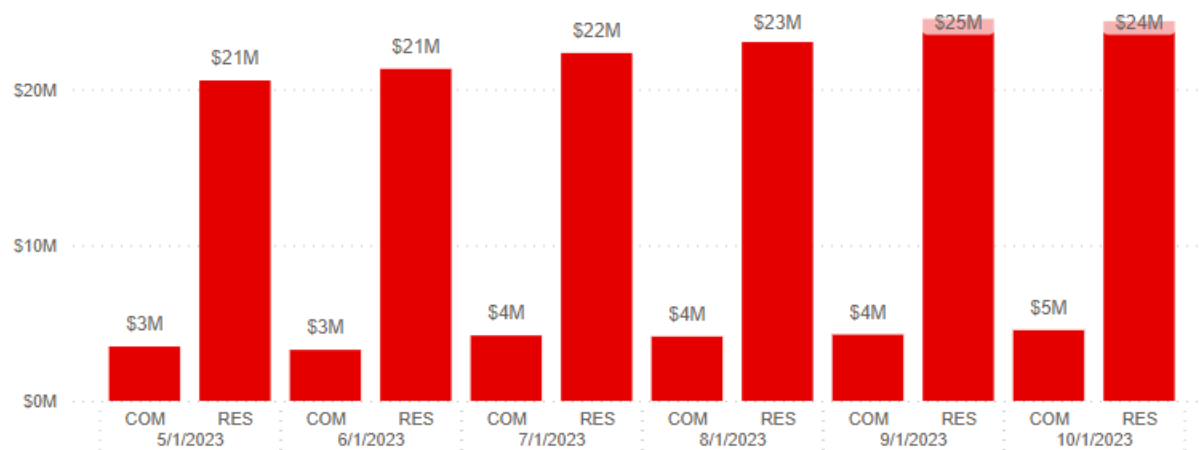


Figure 4: State of SDCP Arrearages Residential vs Commercial

Balances over 120 days - RES vs COM



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on October 19, 2023.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2023 Year-to-Date Period Ended 08/31/23 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of August 31, 2023, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. San Diego Community Power's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
October 5, 2023

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of August 31, 2023

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 194,382,236
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	167,334,495
Accrued revenue	100,825,173
Prepaid expenses	16,905,151
Other receivables	19,320
Deposits	17,486,014
Total current assets	<u>497,452,389</u>
Noncurrent assets	
Lease asset, net of amortization	810,877
Capital assets, net of depreciation	153,200
Cash and cash equivalents - restricted	1,897,129
Deposits	2,330,000
Total noncurrent assets	<u>5,191,206</u>
Total assets	<u>502,643,595</u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	156,842,865
Accounts payable	536,629
Other accrued liabilities	4,200,563
State surcharges payable	439,175
Deposits - energy suppliers	1,005,000
Interest payable	180,205
Lease liability	369,076
Total current liabilities	<u>163,573,513</u>
Noncurrent liabilities	
Bank note payable	20,730,000
Supplier security deposits	624,000
Lease liability	458,523
Total noncurrent liabilities	<u>21,812,523</u>
Total liabilities	<u>185,386,036</u>

NET POSITION

Net investment in capital assets	136,478
Restricted for collateral	2,397,129
Unrestricted	314,723,952
Total net position	<u>\$ 317,257,559</u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Two Months Ended August 31, 2023

OPERATING REVENUES

Electricity sales, net	\$ 344,848,275
Grant revenue	473,250
Total operating revenues	<u>345,321,525</u>

OPERATING EXPENSES

Cost of electricity	208,786,044
Contract services	3,052,657
Staff compensation	1,480,751
Other operating expenses	475,346
Depreciation and amortization	68,257
Total operating expenses	<u>213,863,055</u>
Operating income	<u>131,458,470</u>

NON-OPERATING REVENUES (EXPENSES)

Investment income	224,595
Interest and financing expense	(437,837)
Nonoperating revenues (expenses), net	<u>(213,242)</u>

CHANGE IN NET POSITION

	131,245,228
Net position at beginning of year	186,012,331
Net position at end of year	<u><u>\$ 317,257,559</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Two Months Ended August 31, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 266,434,298
Receipts of supplier security deposits	2,315,863
Other operating receipts	3,075,203
Payments to suppliers for electricity	(119,653,208)
Payments for goods and services	(2,911,329)
Payments of staff compensation and benefits	(1,490,195)
Payments for deposits and collateral	(2,605,000)
Payments of state surcharges	(500,589)
Net cash provided by operating activities	<u>144,665,043</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments - bank note	(15,000,000)
Interest and related expense payments	(803,142)
Net cash provided (used) by non-capital financing activities	<u>(15,803,142)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of lease liability	(66,461)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	<u>(138,011)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Investment income received	<u>224,595</u>
Net change in cash and cash equivalents	128,948,485
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	<u><u>\$ 196,779,365</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 194,382,236
Restricted cash - current	500,000
Restricted cash - noncurrent	1,897,129
Cash and cash equivalents	<u><u>\$ 196,779,365</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Two Months Ended August 31, 2023

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 131,458,470
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	68,257
(Increase) decrease in:	
Accounts receivable, net	(56,820,764)
Accrued revenue	(22,032,389)
Prepaid expenses	13,622,347
Other receivables	214,395
Deposits	(2,159,664)
Increase (decrease) in:	
Accrued cost of electricity	79,497,522
Accounts payable	97,367
Other accrued liabilities	405,916
State surcharges payable	(61,414)
Supplier security deposits	375,000
Net cash provided by operating activities	<u><u>\$ 144,665,043</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended August 31, 2023, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. SDCP's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to SDCP because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
October 5, 2023

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Two Months Ended August 31, 2023**

	2023/24 YTD Budget	2023/24 YTD Actual	2023/24 YTD Budget Variance (Under) Over	2023/24 YTD Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	357,171,118	\$ 359,216,953	2,045,835	101%	\$ 1,346,325,552	\$ 987,108,599
Less Uncollectible Customer Accounts	(14,286,845)	(14,368,678)	(81,833)	101%	(53,853,022)	(39,484,344)
Grant revenue	-	473,250	473,250		-	(473,250)
Total Revenues and Other Sources	<u>342,884,273</u>	<u>345,321,525</u>	<u>2,437,252</u>		<u>1,292,472,530</u>	<u>947,151,005</u>
OPERATING EXPENSES						
Cost of Energy	183,426,530	208,786,044	25,359,514	114%	948,529,425	739,743,381
Professional Services and Consultants	4,732,268	2,969,370	(1,762,898)	63%	22,939,626	19,970,256
Personnel Costs	2,482,078	1,480,751	(1,001,327)	60%	13,178,031	11,697,280
Marketing and Outreach	613,647	314,450	(299,197)	51%	2,973,829	2,659,379
General and Administration	1,880,248	316,528	(1,563,720)	17%	7,861,973	7,545,445
Programs	57,417	-	(57,417)	0%	278,250	278,250
Total Operating Expenses	<u>193,192,188</u>	<u>213,867,143</u>	<u>20,674,955</u>		<u>995,761,134</u>	<u>781,893,991</u>
Operating Income (Loss)	<u>149,692,085</u>	<u>131,454,382</u>	<u>(18,237,703)</u>		<u>296,711,396</u>	<u>165,257,014</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment income	-	224,595	224,595		-	(224,595)
Interest and related expenses	(406,262)	(431,292)	(25,030)	106%	(2,437,574)	(2,006,282)
Transfer to Capital Investment Program	(640,000)	-	640,000	0%	(3,840,002)	(3,840,002)
Total Non-Operating Revenues (Expenses)	<u>(1,046,262)</u>	<u>(206,697)</u>	<u>839,565</u>		<u>(6,277,576)</u>	<u>(6,070,879)</u>
NET INCREASE (DECREASE)	<u>\$ 148,645,823</u>	<u>\$ 131,247,685</u>	<u>\$ (17,398,138)</u>		<u>\$ 290,433,820</u>	<u>\$ 159,186,135</u>

See accountants' compilation report.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors
From: Colin Santulli, Director of Programs
Via: Jack Clark, Chief Operating Officer
Subject: Update on Programs
Date: October 26, 2023

RECOMMENDATIONS

Receive and file update on customer energy programs.

BACKGROUND

Staff will provide regular updates to the Board of Directors (Board) regarding SDCP's customer energy programs.

ANALYSIS AND DISCUSSION

Program Updates

Net Energy Metering (NEM) Updates and Net Billing Tariff (NBT) Proposal

Status: Staff is providing detailed presentations to summarize the proposed updates to NEM and recommendations to adopt NBT proposal at the October 26, 2023 Board Meeting.

Next Steps: If the Board adopts the staff recommendations, staff will work with Calpine Energy Solutions to implement the tariff for new onsite generation customers and NBT customers currently being served on NEM 2.0 on an interim basis. Staff will work with Calpine and SDG&E to ensure proper testing and validation of data communications and billing mechanics following adoption. Additionally, Staff will work to create a new webpage on the SDCP website with information on NBT.

Regional Energy Network (REN) Formation

Status: Staff is providing a detailed update on the progress of the REN Formation at the October 26, 2023 Board Meeting.

Next Steps: SDCP Staff will continue to develop the Business Plan Application and supporting documents. Staff will request approval of the final application from the SDCP

Board of Directors at the December meeting, prior to CPUC submittal. Staff expects to submit the completed Business Plan Application to the CPUC in December 2023.

Grant Programs

Status: Staff are currently working on administering/launching two grant programs—one for community-based organizations/nonprofits and another for SDCP's member agencies. SDCP's Community Grant Program aims to support clean energy projects that provide economic, environmental, and health benefits to SDCP's communities. The Board approved the contract for the Program Administrator, The San Diego Foundation, at the September Board meeting.

SDCP's Member Agency Grant Program will aim to support SDCP member agencies' climate action goals and initiatives such as projects or programs that promote clean energy, reduce carbon emissions, support climate equity, and advance local economic development. SDCP's FY 2023-24 budget included funds to create a member agency grant program as a component of the Programs Department budget. The Member Agency Grant Program Policy was approved at the August Board meeting and Staff are currently undergoing a procurement process to establish program administration support.

Next Steps: Staff plan to provide an update on Grant Programs at the November CAC meeting. Staff plan on launching the FY 2023-24 Community Grant Program in Q1 2024 and the inaugural Member Agency Grant Program in Q4 2023.

Energy Education Website

Status: Staff designed and launched a webpage to provide education on electrification, various technologies, and an option for customers to take action through a to-be-launched online marketplace. Staff have engaged with two online marketplace vendors to integrate with the webpage. The initial marketplace will be made available in November to include rooftop solar, battery storage, and water heaters. This marketplace will allow customers to obtain competitive bids from reputable installers and be connected to an energy advisor to receive support and assistance to complete a project. Staff provided an overview of the energy education webpage at the October CAC Programs Ad-Hoc Committee meeting.

Next Steps: Staff will provide an update on the Energy Education initiative at the November CAC Meeting. Q1 2024, Staff plan to deploy the second online marketplace to include additional household appliances.

CPUC Green Tariff Programs

Status: On October 18, 2023, Staff hosted a dedicated RFO webinar for potential bidders to learn more about the technical elements and submittal requirements.

Next Steps: Staff will continue to engage in targeted outreach to key stakeholders, particularly in CPUC-defined disadvantaged communities to increase overall program



awareness among residents, enrollment in CARE and FERA rates, and stimulate a healthy bid response prior to the RFO response deadline of February 24, 2024.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

Staff meet monthly with the CAC Ad-Hoc Programs Committee to discuss ongoing Programs Department activities.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Managing Director of Power Services
Via: Karin Burns, Chief Executive Officer
Subject: Update on Power Resources
Date: October 26, 2023

RECOMMENDATION

Recommendation: Receive and file update on Power Resources

BACKGROUND

Staff provides the updates below to the Board of Directors regarding SDCP's power energy procurement activities.

ANALYSIS AND DISCUSSION

Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house a number of activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now 8 people strong. Recently, SDCP posted two additional roles for the Power Services team, for a compliance analyst and a contract management analyst. The compliance analyst role has been filled and staff is currently interviewing for the contract management analyst.

Long-term Renewable Energy RFPs

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply

portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy, staff have released two RFPs for eligible Renewable Energy resources in the past 12 months. Staff are deep in negotiations with several respondents for resources that are expected to be online between 2025 and 2028. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft agreements with the SDCP Board for approval and authorization to execute the relevant documents.

In addition to RFPs issued by SDCP, the power service team also closely monitors market offers from the IOUs in California to secure contracts for short-term and long-term renewable projects.

Stand-Alone Energy Storage RFP

In addition to the two aforementioned Renewable Energy RFPs, staff have also launched an RFP for stand-alone energy storage resources, which will allow SDCP to meet resource adequacy requirements and protect against market price volatility with clean, reliable storage capacity that can be contracted for 10-20 years. SDCP is pursuing stand-alone energy storage resources of at least 10 MW in capacity, at least 4-hours of duration, and which are expected to be online between 2024 and 2028. Staff have shortlisted and waitlisted select projects after review with the ECWG. Staff are now in negotiations with several respondents for resources that are expected to be online between 2025 and 2028.

Local Development

SDCP’s rolling Local RFI remains open and has already brought in multiple projects under negotiation and contract, including the 35 MW Arrowleaf Solar+Storage facility (Imperial County, executed June 2023) and 19.5MW of long-term agreements recently executed with EnerSmart for Local RA from battery storage facilities in San Diego County. SDCP



is also releasing an RFO for distributed renewable energy resources (DERs) the week of October 23rd which will focus on a broad range of distribution-level renewable projects within San Diego County. SDCP expects to bring a handful of resulting PPAs to the Board in Q1 for consideration. Additional ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected in Q1, and continued collaboration with member agency staff to identify strategic opportunities to further infill development in 2024. SDCP is briefing the Board this month with its proposed infill development plan updates.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which will be due in late February 2024. SDCP is hosting two webinars this month to aid bidders with the solicitation process.

SDCP's Local RFI and Feed-in Tariff remain open. More information is available about each at the links below.

- <https://sdcommunitypower.org/resources/solicitations/>
- <https://sdcommunitypower.org/programs/feed-in-tariff/>

RPS Procurement

SDCP staff continues to actively manage its environmental portfolios and to closely monitor the market for renewable and carbon-free energy sources, procuring RPS in the bi-lateral market, and continuing procurement efforts as market opportunities become available. These procurement efforts will serve to help meet SDCP's near-term environmental goals as long-term projects in development come online.

Market Update

Due to lingering effects of the COVID-19 pandemic, namely inflation and heavily impacted commodity supply chains that have delayed development of new-build energy resources expected to be online over the last two years, the market for renewable energy and resource adequacy (RA) resources continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to brainstorm near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources i) to meet SDCP's portfolio needs practically and cost-effectively and ii) to establish a portfolio of resources that will provide value to SDCP and California's clean, reliable energy needs into the future.

COMMITTEE REVIEW

N/A

FISCAL IMPACT



N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors
From: Chandra Pugh, Director of People
Via: Karin Burns, Chief Executive Officer
Subject: Update on Human Resources
Date: October 26, 2023

RECOMMENDATION

Receive and File the Update on Human Resources.

BACKGROUND

Human Resources (HR) has been working on the following priorities:

Implementing Career Ladders in Lattice: Our new performance management system helps managers and HR manage productivity, performance, and feedback. We are currently on track with designing career tracks in Lattice inclusive of role competencies for each of our staff members.

We have also begun the next phase of our efforts to ensure transparent pay practices by partnering with Mercer on our second salary survey. We are also participating in a larger labor benchmarking survey that includes representative CCA organizations across the state.

Hiring: This month, SDCP welcomes several new employees:

Aaron Lu, Rates and Strategy Analyst
Brynn Gallahue, Account Services Analyst

Current open positions include:

General Counsel
Key Accounts
Legislative or Sr. Legislative Manager
Senior Executive Assistant

Our Employee Handbook has been finalized and was shared out with all employees. It remains up-to-date and complies with current federal, state, and local employment laws.

DISCUSSION AND ANALYSIS

N/A

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: October 26, 2023

RECOMMENDATION

Receive and file an update on various customer operations.

BACKGROUND

Staff will provide regular updates to the Community Advisory Committee centered around tracking opt actions (i.e., opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to customer operations.

ANALYSIS AND DISCUSSION

A) Mass Enrollment Update

Phase 4:

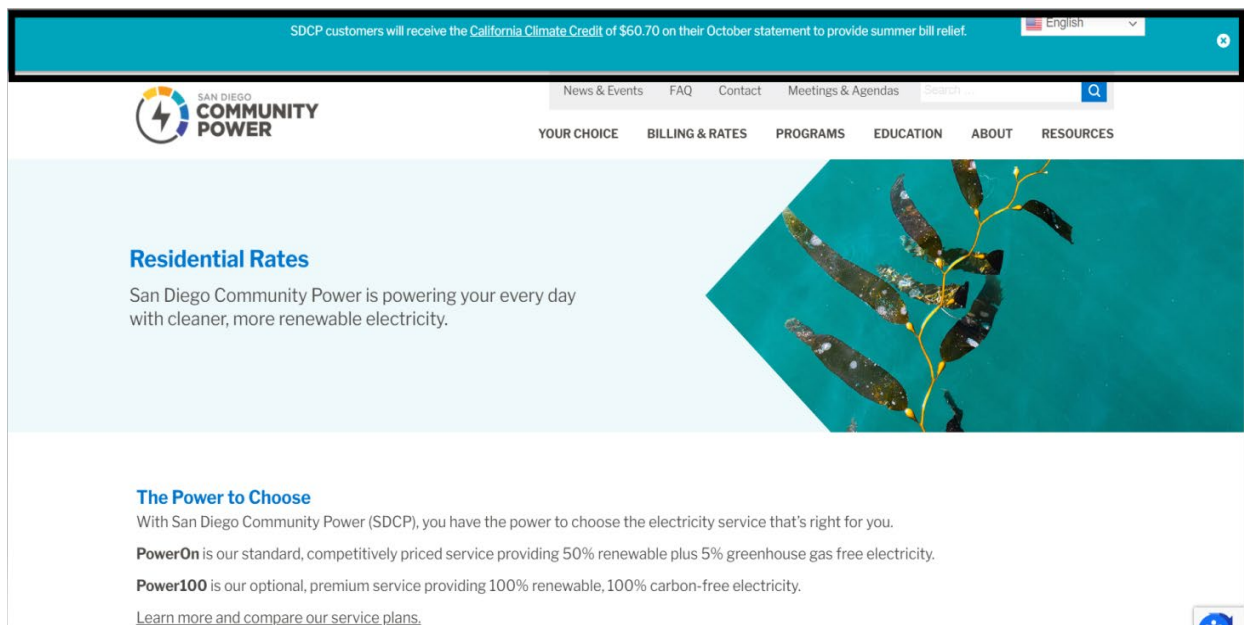
Mass enrollment for our Non-Net Energy Metering (NEM) customers in National City and Unincorporated County of San Diego is officially complete as of May 3, 2023. As of October 5, 2023, SDCP is serving a cumulative total count of **922,306** active accounts correlating to **1,083,478** meters. There are **146,401** active accounts already enrolled in Unincorporated County of San Diego and **18,327** in National City.

Accounts on Net Energy Metering (NEM) within Phase 4 in National City and County of San Diego began enrollment into SDCP service in April 2023 and will continue for the next twelve months, coinciding with their true up month through March 2024. Enrolled customers will receive 2 post enrollment notices through the mail at their mailing address on file within 60 days of their account switching over to SDCP service.

B) 2023 California Climate Credit

San Diego Community Power's Residential and Small Business customers will receive the California Climate Credit this month (i.e., October 2023) in the amount of \$60.70. The California Climate Credit is part of California's efforts to fight climate change and provides ratepayers with their share of the benefits of California's Cap-and-Trade Program. This credit will be automatically applied to these customers' bills and customers do not have to do anything to receive it. However, it should be noted that since customer billing cycles vary, not every customer will see the bill credit at the same time in October.

Our website currently denotes a banner under our Billing & Rates webpage reminding customers of this credit being applied on their October bills per the snippet below:



C) Customer Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of October 2nd, 2023:

I. Total Opt Outs - Including Active and Inactive

- Active - accounts still active at same premise
- Inactive - accounts that have moved out, or premise is terminated

Opt Outs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
City of San Diego	1,077	19,278	1,042	543	221	354	370	22,883
County of San Diego			6,920	2,667	645	670	804	11,705
City of Chula Vista	266	3,472	244	102	50	86	106	4,326
City of Encinitas	66	1,886	94	31	17	33	20	2,147
City of La Mesa	85	1,272	77	30	18	35	24	1,540
City of Imperial Beach	32	345	27	6	2	4	32	448
National City			137	69	14	17	13	250
Total	1,526	26,253	8,541	3,448	967	1,199	1,369	43,299

Opt Outs by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Residential	36	25,717	7,717	3,091	894	1,119	1,259	39,829
Commercial/Industrial	1,490	536	824	357	73	80	110	3,470
Total	1,526	26,253	8,541	3,448	967	1,199	1,369	43,299

Opt Outs by Reason	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Dislike being automatically enrolled	203	7,214	2,754	1,056	259	309	356	12,151
Rate or additional cost concerns	6	7,754	1,693	792	334	478	573	11,628
Decline to provide	227	3,596	1,397	435	96	107	140	5,998
Other	818	2,653	706	393	59	97	88	4,814
Existing relationship with the utility	2	2,394	1,005	393	104	112	89	4,099
Concerns about government-run power agency	24	1,496	503	213	53	36	62	2,387
Service or billing concerns	6	724	262	108	50	50	51	1,251
Have grid reliability concerns	1	292	169	46	10	4	5	527
Rate or Cost Concerns	233							233
Concerns about lack of equivalent CCA programs		132	53	12	2	6	5	210
Have renewable Energy Reliability Concerns	6							6
Total	1,526	26,253	8,541	3,448	967	1,199	1,369	43,299

Opt Outs by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Web	327	14,353	5,202	1,837	462	518	667	23,365
Customer Service Rep (CSR)	1,098	7,002	1,846	876	261	354	351	11,787
Interactive Voice Response (IVR)	101	4,899	1,493	735	244	327	351	8,150
Total	1,526	26,253	8,541	3,448	967	1,199	1,369	43,299

*Historical opt outs including inactive accounts as of 10/02/2023.

II. Opt Ups to Power 100

Opt Ups by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
City of San Diego	3,163	2,868	181	114	50	27	30	6,420
City of Chula Vista	701	168	18	15	5	5	5	917
City of La Mesa	148	118	6	5	1		1	279
County of San Diego			48	91	17	11	10	177
City of Imperial Beach	60	29		1	1	8		99
City of Encinitas	18	1	1					20
National City			1	9				10
Total	4,090	3,184	255	235	74	51	46	7,921

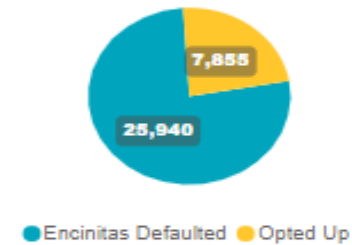
Opt Ups by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Commercial/Industrial	4,087	290	74	99	15	16	9	4,578
Residential	3	2,895	181	136	59	35	37	3,344
Total	4,090	3,184	255	235	74	51	46	7,921

Opt Ups by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Customer Service Rep (CSR)	4,059	1,369	97	118	22	20	12	5,685
Web	27	1,738	137	100	44	26	31	2,101
Interactive Voice Response (IVR)	4	81	21	17	8	5	3	139
Total	4,090	3,184	255	235	74	51	46	7,921

Cumulative Power100 Accounts

Opt Ups by Jurisdiction	Active
City of Encinitas	25,940
City of San Diego	6,384
City of Chula Vista	913
City of La Mesa	277
County of San Diego	173
City of Imperial Beach	98
City of National City	10
Total	33,795

Power100 Opt vs Defaulted

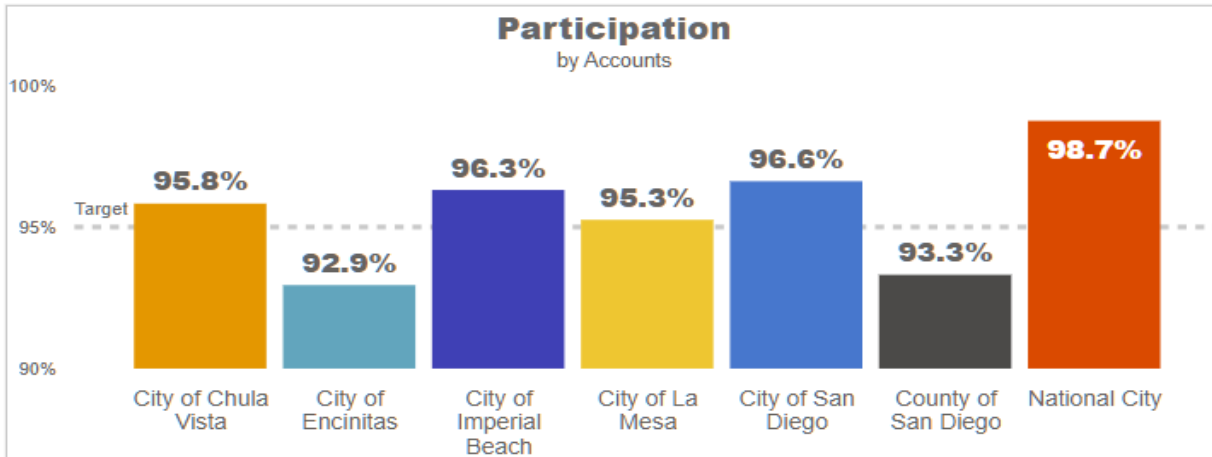


III. Opt Downs from Power100

Opt Downs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
City of Encinitas	35	425	27	17	3	10	7	524
City of San Diego		26	5	5		1		37
City of Chula Vista		1	3					4
County of San Diego			1	1	1		1	4
City of La Mesa		2						2
City of Imperial Beach		1						1
Total	35	455	36	23	4	11	8	572

Opt Downs by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Residential		433	36	15	4	10	8	506
Commercial/Industrial	35	22		8		1		66
Total	35	455	36	23	4	11	8	572

Opt Downs by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Customer Service Rep (CSR)	31	305	21	19	2	7	6	391
Web		124	13	4	2	3	2	148
Interactive Voice Response (IVR)	4	26	2			1		33
Total	35	455	36	23	4	11	8	572



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,420	97,488	4,068	95.8%
City of Encinitas	26,449	28,456	2,007	92.9%
City of Imperial Beach	10,543	10,947	404	96.3%
City of La Mesa	28,062	29,460	1,398	95.3%
City of San Diego	599,089	620,065	20,976	96.6%
County of San Diego	145,553	174,425	11,665	93.3%
National City	18,355	19,032	238	98.7%
Total	921,471	979,873	40,756	95.8%

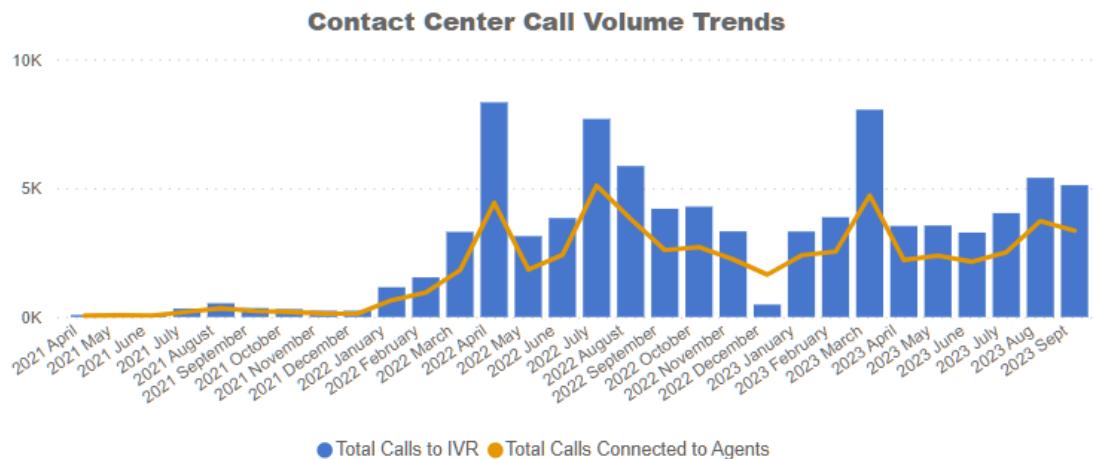
Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM) customers from April 2023 through March 2024. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

D) Contact Center Metrics

As anticipated, call volumes began to noticeably increase in August, which was expected as customers started noticing bills with summer rates. Consistent with the seasonal transition to summer rates as of June 1 where generation rates are generally higher than those in Winter, more customer inquiries around higher bills have been fielded and a modest uptick in opt outs ensued. With the transition to winter rates effective as of November 1st, call volumes are expected to go down.

The chart below summarizes contact made by customers into our Contact Center broken down by month through October 2nd, 2023:

V. Contact Center Metrics



Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Total Calls to IVR	2,289	47,118	15,229	10,356	4,031	5,399	5,113	89,535
Total Calls Connected to Agents	1,401	30,174	9,641	6,735	2,515	3,723	3,351	57,540
Avg Seconds to Answer	20	12	8	3	4	10	7	12
Avg Call Duration (Minutes)	8.5	9.8	9.4	9.5	10.3	10.1	10.4	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	96.80%	99.69%	99.01%	95.34%	97.32%	96.44%
Abandon Rate	0.57%	0.36%	0.26%	0.00%	0.08%	0.35%	0.09%	0.36%

Similar to other CCAs' service territories, we are anticipating the trend of our customers calling into our Contact Center's Interactive Voice Response (IVR) system tree and being able to self-serve their opt actions using the recorded prompts as well as utilizing our website for processing opt actions to continue accounting for over 65% of all instances. The remaining portion of customer calls are connected to our Customer Service Representatives to answer additional questions, assist with account support, or submit opt actions.

E) Customer Service Email Trends



Customer Service Emails								
	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	2023-09	Total
Emails Received	272	2,894	795	453	127	171	157	4,869
Emails answered or escalated within 24 hours	257	2,821	790	452	127	168	157	4,772
Completion (%)	94%	98%	99%	100%	100%	98%	100%	97%

As of this latest reporting month, we still have a total of 13 Dedicated Customer Service Representatives staffed at our Contact Center and 2 Supervisors. Our robust Quality Assurance (QA) procedures are firmly in place to ensure that our customers are getting a world-class customer experience when they contact us.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Marketing and Public Relations

Date: October 26, 2023

RECOMMENDATION

Receive and file update on marketing and public relations activities for San Diego Community Power.

BACKGROUND

San Diego Community Power (SDCP) has engaged in a variety of public relations, marketing, and community outreach activities to drive awareness, spark community engagement, and maintain high customer enrollment.

ANALYSIS AND DISCUSSION

The Public Affairs team had a very busy September as it ramped up its in-person engagement efforts with the expansion of its Community Engagement division and prepared a variety of SDCP representatives for speaking engagements that reached thousands of people in San Diego and beyond.

Recent and Upcoming Public Engagement Events

Sept. 9, 2023 – Clairemont Family Day
Sept. 9, 2023 - Environmental Health Coalition Semillas “Planting Seeds for the Future” Community Celebration
Sept. 14, 2023 – Cause Conference San Diego
Sept. 14, 2023 – Innovation Day 2023
Sept. 15, 2023 – NEXUS Climate Action Summit
Sept. 16, 2023 – Green Summit
Sept. 16, 2023 – San Diego Wave Fútbol Club game
Sept. 23, 2023 – Coastal Cleanup Day
Sept. 27, 2023 – San Diego Regional Chamber of Commerce Circle of Influence Mixer
Sept. 28, 2023 – Women’s Venture Summit
Oct. 1, 2023 – Paddle for Clean Water

Oct. 3, 2023 – Cleantech San Diego: Holding Power
Oct. 4, 2023 – California Clean Air Day with Power100 Champion Illumina
Oct. 5, 2023 – Encinitas Small Business Resource Fair
Oct. 7, 2023 – Casa Fest 2023: Casa Familiar’s 50th Anniversary Celebration
Oct. 11, 2023 – North San Diego County Chamber of Commerce Regional Connect
Oct. 14, 2023 – Environmental Health Coalition’s Clean Air Congreso
Oct. 15, 2023 – San Diego Wave Fútbol Club game
Oct. 17, 2023 – San Diego Regional Chamber of Commerce October Meeting
Oct. 21, 2023 – Imperial Beach Sun Coast Farmers Market
Oct. 21, 2023 – Beautify Chula Vista
Oct. 25 and Oct. 26, 2023 – Tribal EPA & U.S. EPA Region 9 Conference
Oct. 27, 2023 – 2023 San Diego Green Building Conference & Expo
Nov. 3, 2023 – Lesley K. McAllister Symposium on Climate and Energy Law at the University of San Diego
Nov. 4, 2023 – La Mesa Parks Appreciation Day

Marketing, Communications and Outreach

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts including the launch of “Solar for Our Communities” green tariff programs, an electrification education hub, and the rollout for the Net Billing Tariff, pending approval from the SDCP Board of Directors. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

As the weather began to heat up in August, SDCP launched a “Stay Cool & Save This Summer” campaign that ran through mid-September. The digital ads will direct viewers to visit the SDCP website and teach them energy-saving tips such as the best time of day to use appliances and how to find “Cool Zones” that offer free, air-conditioned settings across the county.

Our social media efforts had direct interactions with more than 26,000 accounts in September, largely due to the “Stay Cool and Save” campaign. Contributing to the reach included our top-performing post, which was an Instagram Reel that gave an easy-to-understand overview of SDCP. The post was seen more than 1,200 times with a total watch time of over four hours.

SDCP is in regular communication with regional media in the spirit of transparency and openness with the goal of providing factual, timely information to the public at large. Over the past two months, SDCP has engaged with reporters to provide background on stories about the greater energy landscape in California and update them on our organization’s activities.



On Oct. 5, the Public Affairs team welcomed Ashley Rodriguez as the agency's first Local Government Affairs Manager. This new role sits in the Public Affairs Department's Strategic Initiatives Division and is responsible for strengthening SDCP's relationships with member agencies at every level. The goal is to provide member agencies with a point of contact who is focused on their needs. The Local Government Affairs Manager hire concludes the Public Affairs Department's hiring plan for the 2023-2024 fiscal year, barring a mid-year budget adjustment that would require approval from the SDCP Board of Directors.

The Public Affairs team will continue to develop new strategies, processes and capacity over the next several months to conduct more community outreach, expand marketing and brand awareness efforts, and provide timely, factual information across multiple channels.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Receive and File Community Advisory Committee Monthly Report
Date: October 26, 2023

RECOMMENDATION

Receive and file Community Advisory Committee (CAC) monthly report.

BACKGROUND

Per Section 5.10.3 of the San Diego Community Power (SDCP) Joint Powers Authority (JPA) Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

At the direction of the Chief Executive Officer (CEO), the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda.

ANALYSIS AND DISCUSSION

During the October 12, 2023 regular CAC meeting:

- Vice-Chair Harris (La Mesa) chaired the meeting and Chair Vasilakis (City of San Diego) participated virtually under AB 2449.
- CAC members welcomed the following new staff members:
 - Ashley Rodriguez, Local Government Affairs Manager
 - Emily Fisher, Sr. Program Manager
 - Timothy Treadwell, Sr. Program Manager
 - Christopher Stephens, Procurement Manager

- The CAC approved the consent agenda, including September meeting minutes and updates on Marketing and Public Relations, Customer Operations, and Regulatory and Legislative Affairs. Members received staff reports and briefings for all items.
- The Power Services team updated members on its revisions to the Energy Proposal Evaluation Criteria. Members had questions around Community Benefits and Workforce Development. This item was discussed at a previous Community & Equity Ad-Hoc Committee meeting.
- The Programs and Account Services teams provided updates on Net Billing Tariff (NBT) and the existing Net Energy Metering (NEM) policy. Members were offered opportunities to receive item-specific briefings outlining a detailed analysis of estimated savings and avoided cost calculator rates, generation adders, Net Surplus Compensation (NSC), stakeholder engagement, and SDCP's proposed Battery Energy Storage Pilot Program. During the meeting, members asked clarifying questions and suggested conducting outreach to environmental justice groups, commending staff's excellence in leading the charge implementing a progressive and comprehensive program.
- The CAC heard updates on the October activity of its Ad-Hoc Committees. The Programs Ad-Hoc Committee discussed and provided feedback to staff on several customer programs, including the budget allocation of the Regional Energy Network (REN), which was requested at the September regular CAC meeting, the upcoming Energy Education and Online Marketplace, and NBT. Staff also provided the group with an overview of the October outreach and events schedule. The Community & Equity Ad-Hoc Committee did not meet in October, as members are working with staff to arrive at a recurring date and time that works best for all participants to attend.
- The CAC Fiscal Year 2022-2023 Work Plan will be updated later this year. No potential agenda items were suggested for Board of Directors meetings. Committee members also provided announcements on upcoming events and volunteering opportunities with SDCP.

As of October 19, 2023, the CAC has one vacancy representing the County of San Diego. The vacancy for the City of Imperial Beach is expected to be filled in the coming weeks. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory & Legislative Affairs
Aisha Cissna, Senior Policy Manager
Stephen Gunther, Senior Regulatory Analyst

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: October 26, 2023

RECOMMENDATIONS

Receive and file update on regulatory and legislative affairs.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement.

ANALYSIS AND DISCUSSION

A) Regulatory Updates

Remote Grid Protest

On September 6, 2023, San Diego Gas and Electric (SDG&E) submitted an [advice letter](#) ("AL") seeking approval by the CPUC of their Remote Grid Standalone Power System Addendum Agreement. Remote grids are standalone energy resources and infrastructure for permanent energy delivery to customers who would no longer be part of the larger distribution grid. Remote grids are intended to serve small loads in remote locations where distribution lines are expensive and/or difficult to maintain. They can be fueled by renewable resources such as solar arrays, non-renewable sources such as propane, or a mixture of both renewable and non-renewable resources.

SDCP and CEA ("Joint CCAs") raised several concerns with the remote grid initiative as proposed in the AL by filing a protest to the AL on September 26, 2023. The concerns and requests expressed in the protest are as follows:

- There is no explicit requirement for SDG&E to inform CCAs when they are pursuing a remote grid, or any mention of how they will address remote grids in

CCA service areas. The CCAs requested that SDG&E secure written concurrence from CCAs prior to deploying a remote grid in a CCA service area.

- SDG&E does not explicitly state that this initiative is a pilot but describes the remote grid program as a “proof-of-concept”. The CCAs recommended that the AL be revised to clarify that the initiative is a pilot and, if future program expansion is pursued, that SDG&E be required to file a formal application to allow for more robust stakeholder input and Commission review.
- The number of proposed remote grids and expected size of the customer loads to be served do not clearly align with the proposed remote grid initiative load cap. The AL should be revised to provide clarification, so the capped size of the pilot is unambiguous.
- SDG&E is proposing to use renewable and/or non-renewable fuels for the remote grid initiative at its discretion. To stay on track with meeting state renewable energy and climate goals, the CCAs recommended that the remote grid be composed of 70% renewable energy.
- The CCAs recommended that SDG&E should clarify that participation in the remote grid initiative is based on customer agreement and consent.
- The CCAs recommended that SDG&E clarify that they will remit generation revenues from CCA customers served by remote grids to the CCAs.
- The CCAs recommended that SDG&E should submit a public report within two years of the first remote grid coming online that captures renewables utilized, costs, rate impacts, performance, customer participation, and other important details.
- The CCAs recommended that SDG&E should adopt a proactive approach to planning for increases in remote grid customer load so that customers do not face barriers to electrification or EV adoption.

SDG&E replied to the Joint CCA protest on October 3, 2023, contesting several points. The next step in the process is for the CPUC to issue a draft resolution which will afford another opportunity for stakeholder comment prior to the CPUC adopting a final resolution on the initiative. A draft resolution is expected to be released sometime in Q1 2024; however, that is subject to change at the CPUC’s discretion.

Net Billing Tariff Update: Meeting with CPUC President Alice Reynolds’ Office to Discuss CCA Customer Billing Presentment Issues

Background

As presented in the Update on Regulatory and Legislative Affairs during the September 14, 2023, meeting of the Community Advisory Committee ([see Item 4 in the agenda packet](#)), on August 2nd, 2023, the CPUC released a proposed decision in the net energy metering (NEM) proceeding. This proposed decision speaks to several remaining issues including consumer protections, prevailing



wage requirements for contractors, evaluation principles for the net billing tariff (NBT), successor tariffs for the Virtual Net Energy Metering and Net Energy Metering Aggregation tariffs, and customer billing presentment issues. The CPUC initially planned to vote on the proposed decision on September 21, 2023, but has delayed the vote to November 2, 2023.

Engagement on Customer Billing Presentment Issues

The proposed decision acknowledges that customers have historically experienced challenges with understanding their net energy metering bills and proposed public workshops to review these difficulties for NBT customers.

SDCP and other CCAs submitted [opening comments](#) in response to the proposed decision, requesting language be added to the decision that would require unbundled customer billing issues be explicitly addressed in CPUC-ordered NBT billing presentment discussions, as unbundled customer issues are distinct from those experienced by IOU customers. To underscore the need for adding this language, the Joint CCAs noted that they have successfully collaborated with IOUs to develop NEM billing presentment solutions in the past, but one such CPUC-approved proposal was never implemented. Additionally, the proposed decision posits closing the proceeding once the final decision is adopted. In response, the Joint CCAs requested that the proceeding remain open to "expediently address billing presentment questions that arise during implementation." The Joint IOUs opposed the Joint CCAs' proposals in reply comments, mischaracterizing several points that were made.

Subsequently, to further advocate for unbundled NBT customer billing presentment needs, SDCP and several other CCAs met with President Alice Reynolds' office on October 3, 2023. In this meeting, the Joint CCAs further described unbundled customer billing issues and reiterated the need for adopting the Joint CCAs' proposed decision language. The President's Office appeared to be receptive and connected the CCAs with Energy Division staff to continue discussing the issues at hand. The Joint CCAs met with Energy Division on October 17, 2023, and may have further meetings to continue resolving issues.

Resource Adequacy (RA)

CalCCA Resource Adequacy Stack Analysis

The Resource Adequacy (RA) program in California is critical for ensuring load serving entities (LSE) have sufficient capacity to maintain reliable electric service. However, recent market conditions and programmatic challenges have made it increasingly difficult for LSEs, including SDCP, to meet their RA obligations and as a result face financial penalties that impact ratepayers.

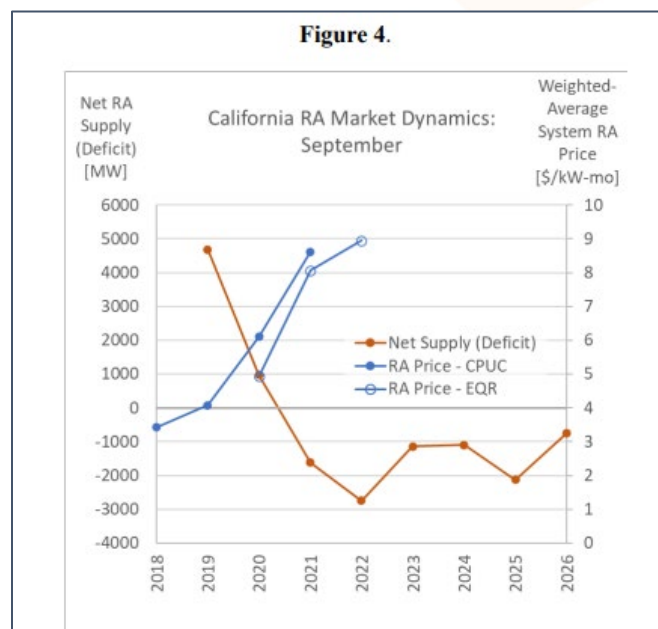


CalCCA recently examined the RA problem and potential solutions in a stack analysis paper entitled, [California's Constrained RA Market: Ratepayers Left Standing in a Game of Musical Chairs](#). The stack analysis is a helpful tool in understanding and communicating the challenges LSEs face under the realities of the current RA framework and market conditions. In short, the analysis finds that, “the demand for RA in California exceeds the available supply, even after accounting for imports and expected additions of resources.” This market scarcity and imbalance in supply and demand has resulted in skyrocketing RA prices.

Figure 1

	Jun	Jul	Aug	Sep
1 CAISO 1-in-2 Load	42,354	45,510	46,074	46,829
2 Reserve Margin (16%)	6,777	7,282	7,372	7,493
3 Total RA Demand	49,131	52,792	53,446	54,322
4 2023 NQC List	47,640	48,308	48,066	48,373
5 Event-Based Demand Response	995	1,045	1,077	1,090
6 Imports	6,000	6,000	6,000	6,000
7 Thermal Plant Derate	(700)	(700)	(700)	(700)
8 Excess IOU Resources In IOU Supply Plans	(1,266)	(507)	(1,269)	(968)
9 Retention for Substitution	(619)	(619)	(619)	(619)
10 Total RA Supply	52,049	53,527	52,554	53,176
11 Surplus Supply (Deficit)	2,919	735	(892)	(1,146)

CalCCA Stack Analysis: System RA demand and supply for peak months in 2023



CalCCA Stack Analysis: RA supply and prices

CalCCA’s stack analysis offers seven interim actions for CPUC consideration to help alleviate the current RA problems. SDCP staff will continue to leverage CalCCA’s analysis to educate policymakers on the challenges and potential solutions within the RA framework.

New Order Instituting Rulemaking (OIR) to Oversee the RA Program

On October 12, 2023, the CPUC voted to open a new [Order Instituting Rulemaking Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations](#). This proceeding is the successor to Rulemaking 21-10-002, which addressed RA topics and reforms over the past two years, and will also address forward RA procurement obligations beginning with the 2025 compliance year. The following issues are included in the preliminary scope:

- Adoption of Local Capacity Requirements
- Adoption of Flexible Capacity Requirements
- Loss of Load Expectation Study and Planning Reserve Margin
- 24-Hour Slice-of-Day Framework
- Unforced Capacity Methodology (UCAP)
- Qualifying Capacity (QC) Counting Conventions
- Resource Adequacy Compliance and Penalties
- Coordination with the Integrated Resource Planning (IRP) Proceeding
- Refinements to the Resource Adequacy Program

A prehearing conference is scheduled for November 17, 2023, and a Scoping Memo outlining the issues and proceeding schedule is expected in December 2023. SDCP staff will work closely with CalCCA to track and engage in this new proceeding.

ERRA Forecast Proceeding Update

On October 4, SDCP and CEA jointly filed an [opening brief](#) in the ERRA forecast to make the following three points:

1. The CPUC should require SDG&E to adopt a forecasted 2024 RA sales volume equal to the average of actual RA sales recorded between January and June 2023 (567 MW).
2. For future ERRA Forecast proceedings, the CPUC should direct SDG&E to evaluate RA market conditions and historical RA sales to develop a forecast of Sold RA.
3. The CPUC should order SDG&E to revert back to past confidentiality designation processes that allow for the publication of current and proposed class average bundled rates.

SDG&E's refusal to forecast RA sales artificially raises the total PCIA portfolio cost forecast, meaning that all customers, CCA and SDG&E bundled customers alike, will pay more upfront in PCIA costs that will ultimately be refunded later. SDCP



and CEA argue that SDG&E should more accurately forecast PCIA portfolio costs to save customers money in the short term and also reduce rate volatility. SDCP filed a [reply brief](#) on October 11, 2023 requesting that the CPUC require SDG&E to adopt the recommendations set forth above from the Opening Brief. A proposed decision in this proceeding is expected on November 28, 2023, with a final decision expected to be adopted by December 14, 2023.

B) Legislative Update

During the 2023 Legislative Session, SDCP took positions on seven bills. SDCP supported each of these bills, other than AB 1373, which SDCP initially opposed and ultimately moved to neutral on. The following is a list of these bills, a brief description of the bill, and its current status:

1. AB 50 (Signed by Governor): Requires timely interconnection of customer load. Requires IOUs that energized less than 35% of customers with completed applications exceeding 12 months in duration by January 31, 2023, to submit a report to the CPUC on or before December 1, 2024, demonstrating that the IOU has energized 80% of customers with applications deemed complete as of January 31, 2023. The bill also requires each IOU to evaluate and update its existing distribution planning processes. To inform the CPUC's determination of criteria for timely service, the bill requires the CPUC to annually collect certain information from each IOU until new reporting requirements are established.
2. AB 643 (Not Active – 2 Year Bill): Would have required the CPUC to submit a report to the Legislature on timelines for the interconnection of customer-sited energy generation and storage resources.
3. AB 1373 (Signed by Governor): Establishes a central procurement entity for long lead time resources, among other provisions, which have been detailed in past SDCP staff reports.
4. SB 233 (Not Active - 2 Year Bill): This bill would have required the CEC to convene a stakeholder workgroup to examine challenges and opportunities associated with using an EV as a mobile battery to power a home or building or provide electricity to the electrical grid, and required the CEC to submit a report to the Governor and Legislature that includes specified information related to the bidirectional capability of EVs and electric vehicle service equipment. This bill would have required that, beginning in model year 2030, all new electric vehicles sold in California be bidirectional capable, including light-duty motor vehicles and school busses, except as exempted by the state board.
5. SB 411 (Signed by Governor): This bill would permit use of alternate teleconferencing provisions similar to the emergency provisions used during the coronavirus state of emergency indefinitely and without regard to a state of emergency. This bill originally



would have applied to SDCP, however, it was subsequently amended to be inapplicable to SDCP and would only apply in a narrow set of circumstances.

6. SB 547 (Not Active - 2 Year Bill): This bill would have permitted use of alternate teleconferencing provisions similar to the emergency provisions used during the coronavirus state of emergency indefinitely and without regard to a state of emergency.
7. SB 619 (Vetoed By Governor): This bill would have given utilities the option to get CEQA reviews for transmission projects from the CEC instead of the CPUC and limited the reviews to 270 days.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Ascend Analytics Pilot Extension Agreement through
December 31, 2023

Date: October 26, 2023

RECOMMENDATION

Approve the Ascend Analytics Pilot Extension Agreement to extend SDCP's utilization of Ascend Analytics' PowerSimm portfolio management platform.

BACKGROUND

In preparation for the SDCP's 2023 Standalone Storage RFO issued in April 2023, SDCP reached out to five vendors to receive quotes for bid analysis services. After confirming which vendors offered the scope SDCP was interested in, three vendors provided bids including Ascend Analytics, cQuant and ZGlobal. After evaluating each provider, we selected Ascend Analytics based on competitive pricing and their scope of services, which included pilot access to Ascend's PowerSimm portfolio management platform. SDCP is still exploring the capability of PowerSimm and utilizing the platform as an additional tool to gain insights on SDCP's portfolio. SDCP contracted with Ascend Analytics (Ascend) on the RFO evaluation and PowerSimm pilot on April 5, 2023.

ANALYSIS AND DISCUSSION

Staff recommends executing this Ascend Analytics Pilot Extension Agreement (Extension Agreement) to allow SDCP to continue use and evaluation of PowerSimm's portfolio management capability, which includes modeling SDCP's load, hedging and generation contracts. The pilot period will allow staff to run ad hoc studies as new projects are contracted or evaluated for contracting, monitor market price impacts, and measure portfolio changes. Staff expect to solicit proposals for longer term portfolio modeling services via solicitation in the coming months; this extension of the current PowerSimm services agreement will ensure that staff retain access to portfolio modeling software consistently until any new service resulting from the upcoming RFP is implemented.

FISCAL IMPACT

The cost of this Pilot Extension Agreement through December 31, 2023 is \$50,000. The Pilot Extension Agreement also allows for a \$10,000 per month extension.

ATTACHMENTS

- A. Ascend Analytics Pilot Extension Agreement through December 31, 2023

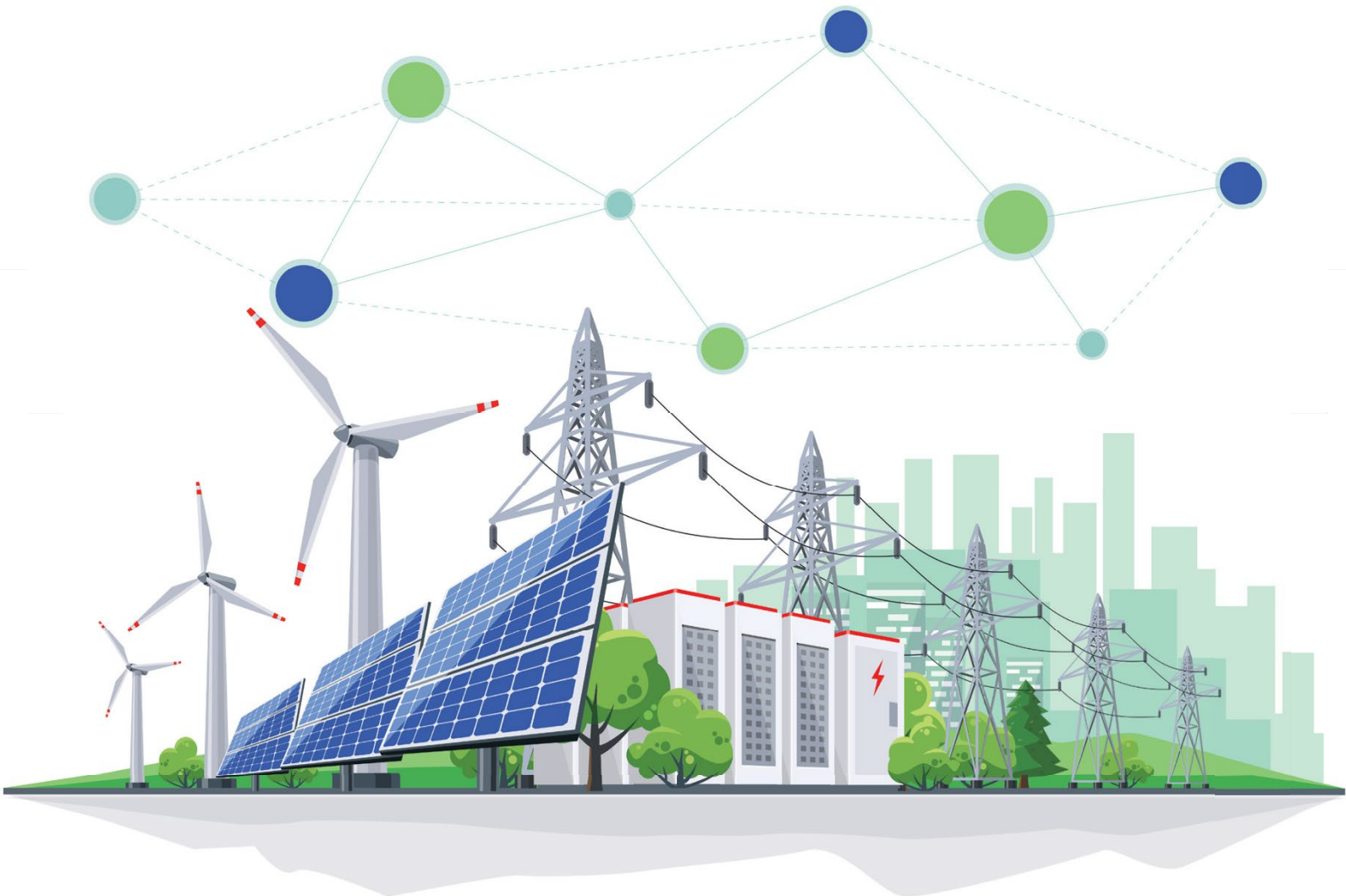


San Diego Community Power

PowerSIMM Pilot

Pilot Extension Agreement (Through December 31, 2023)

October 17, 2023



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1. Project Description

1.1 PILOT EXTENSION THROUGH DECEMBER 31, 2023

Ascend is pleased to permit San Diego Community Power to enjoy PowerSIMM and relevant works developed through the initial Pilot Period as contracted for on April 5, 2023, per the terms of this extension, per the terms of this extension agreement.

Duration:	Through December 31, 2023
Users:	4 active PowerSIMM users
Benefits/Scope:	Portfolio analysis of future cash flows and optimization of hedge contracts to mitigate the uncertainty in these cash flows across a 5-year horizon of SDCP's portfolio in Ascend's PowerSIMM framework involving: <ul style="list-style-type: none">• Set-up and configuration for CAISO modeling• SDCP's portfolio and prospective transactions• Portfolio Management reporting• What-if scenario analysis with RFO projects
Intro Period Cost:	\$50,000 ¹ (Pilot Extension)
Monthly Additional:	\$10,000 per additional month
Support Includes:	100 hours of support credit (unused hours may be added to a full license term)
Markets Covered:	CAISO; including update to Ascend Market Intelligence CAISO 4.2 Release
Resource Types:	Load, Renewable PPAs & Transactions
Transaction Types:	Hedge instruments and spot market purchases/sales
Study Durations:	2023-2044, 100 iteration stochastic studies
Reporting:	PowerCube via Excel, PowerSIMM PowerBI Embedded Reports

¹ Pilot Extension invoiced in full upon execution of agreement and inclusive of 100 hours of Ascend staff support. Ascend may request SDCP's pre-approval for purchase of additional support in the event SDCP requires support in excess of 100 hours. Intro Period cost of \$50,000 covers the four-month extension period.

1.2 ITEM 2: FINAL DELIVERY OF CONSULTATIVE RISK ASSESSMENT FOR FORWARD PERIODS 2023 THROUGH 2028

Ascend will complete the originally scoped risk assessment pending SDCP provision of outstanding document Q&A for formation of observations and recommendations.

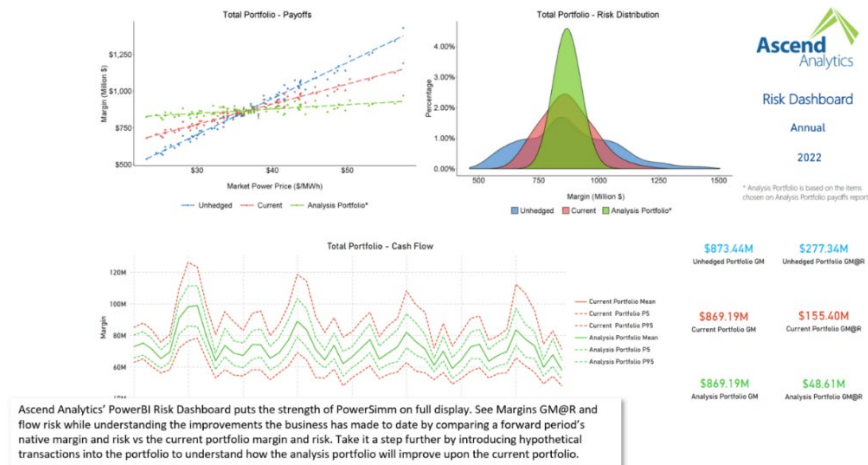


Figure 1. Example Stochastic Retail Portfolio Analysis Identification of an Optimal Portfolio

1.3 ITEM 3: POWERSIMM SAAS SOLUTION (WITH ASCEND MARKET INTELLIGENCE)

Ascend will use the pilot efforts in Item 2 to provide SDCP a full PowerSIMM SaaS production environment solution for (a) portfolio management and (b) resource planning (see Figure 3). Ascend will extend three user accounts for PowerSIMM with the ability to change portfolios, run ad hoc studies, perform retail price structuring, and hedge analysis, monitor market price impacts, and measure the portfolio changes. PowerSIMM will provide SDCP with the ability to extend its risk management operations to include robust stochastic analysis. Ascend will include (c) Ascend Market Intelligence fundamentals for changing market dynamics and long-term CAISO fundamentals as part of the SaaS Solution and accompanied by semi-annual CAISO Market Intelligence written reports (see Appendix A).

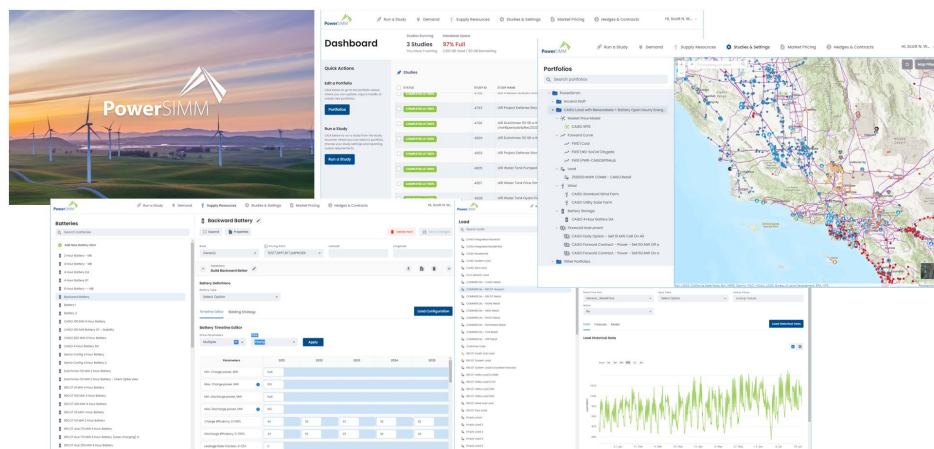


Figure 2. PowerSIMM V New User Interface

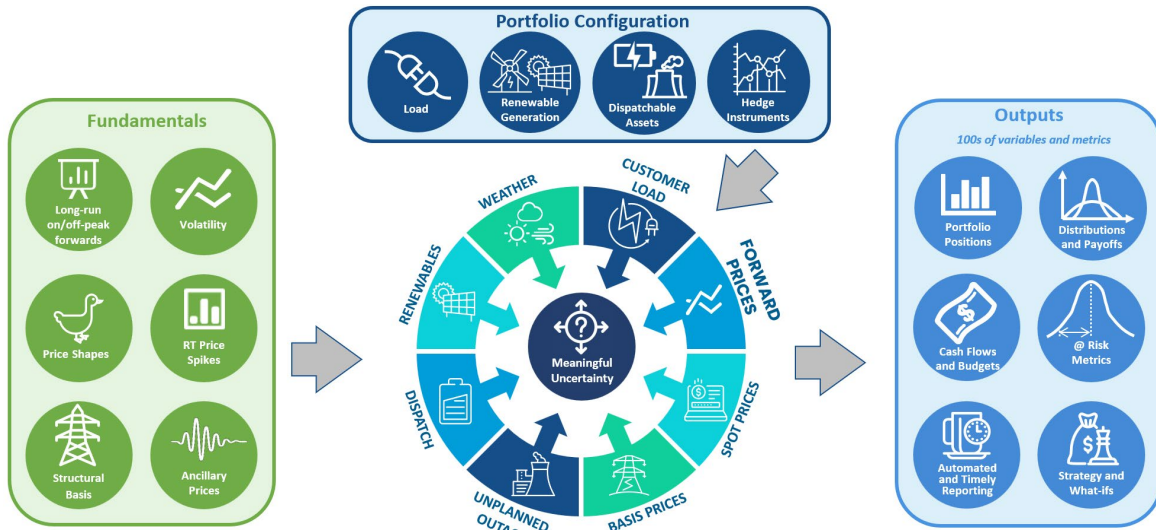


Figure 3. **PowerSIMM Modeling Framework**

1.4 ITEM 4: ‘+SERVICE’ ONGOING COLLABORATIVE AND CONSULTATIVE SUPPORT

A full PowerSIMM license will include 500 to 1,500+ hours per year (subject to scoping) of subject matter expert and analyst time for assistance with model runs, weekly reporting, risk consulting, IRPs, and/or other related activity each year. This ‘+Service’ level arrangement allows SDCP to draw on Ascend to augment its team with extra support in the portfolio risk management and resource planning disciplines. Ascend views this level of service as a distinct way to collaboratively partner with SDCP.

1.5 REPORTING OUTPUT: VALUE, POSITIONS & AT-RISK METRICS

Ascend will deliver standard PowerCube output in .xls format with summarized portfolio performance, financial risk metrics and positions across the stochastic simulation set. These metrics will contemplate the value of the supply power at hourly LMP energy prices from each price location. The expected portfolio value will be the mean of the simulation result by month. Further statistical at-risk metrics will provide the uncertainty as the mean result less the 5th percentile, also known as Gross Margin @ Risk, an industry best practice flow metric. Ascend will produce flexible output in a similar fashion to Figures 5 and 6 below. This sort of model output analysis tool will allow for portfolio alterations and hypothetical hedges for what-if analysis.

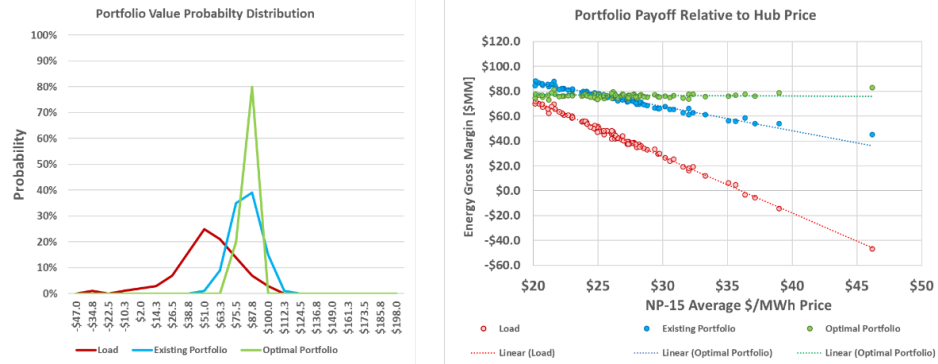


Figure 4. Example Portfolio Risk Metric Reporting from PowerSIMM Output

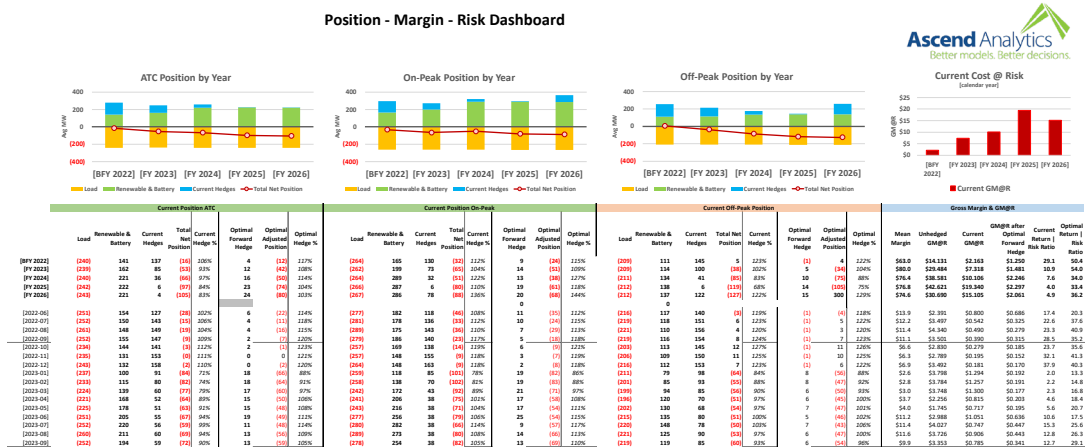


Figure 5. Example Position Reports & Cost at Risk

1.6 ASCEND PLATFORM SERVICE PRICE

Please see the pricing details below and a general description of the offer. **The signature section of this proposal is for the Pilot Extension engagement only.**

After the Pilot Extension period, SDCP may upgrade to a 3-Year SaaS+Service solution. This structure is similar to an approach agreed upon about a year ago between Ascend and Central Coast Community Energy and has long been the arrangement between Ascend and Silicon Valley Clean Energy. For this **indicative** pricing, we have listed two options (Silver and Gold) which vary in nature only in the number of activity units³ provided for each. Please note that the chart shows the cost of all four items as standalone for comparison purposes.

Service Offering	Example	Total Cost	
	Stand-Alone Cost	For 4 Month Pilot Extension	
Item 1: PowerSIMM Pilot Extension through December 31st	\$50,000	\$50,000	
Item 2: Consultative Risk Assessment for 2023 - 2028	Paid for during initial pilot phase, Ascend will honor ongoing efforts		
Item 3: 100 Support Hours for ongoing analytic support of resource valuation and portfolio assessment, along with weekly risk reporting. Any unused hours will be added to the PowerSIMM License full implementation.	Included		
ETRM Manual Data Load Support (One time, data in Ascend template format only)	Included		
		Indicative Bundled	Indicative Bundled

		PowerSIMM SaaS + Service 3-Year Subscription Example – SILVER ²	PowerSIMM SaaS + Service 3-Year Subscription Example - GOLD ³
Item 3a: PowerSIMM Portfolio Manager	\$140,000	Annual Activity Units: 700 Year 1 Cost: \$290,000	Annual Activity Units: 1,200 Year 1 Cost: \$390,000
Item 3b: PowerSIMM Planner	\$ 50,000		
Item 3c: Market Intelligence	\$25,000		
Item 4: '+Service' Ongoing Collaborative and Consultative Support (cost per year) ⁴	\$250,000		
Ascend Valuation Platform Total	\$475,000		

1.7 DELIVERY SCHEDULE ON PORTFOLIO VALUATION

Ascend will provide continued access to the pilot environment for this extension. Additionally, Ascend will provide weekly reporting support and consultation or any other support as requested by SDCP.

Please do not hesitate to contact me or Scott Wrigglesworth at any time with any comments and/or suggestions to our proposal. My direct contact information is gorris@ascendanalytics.com or (303) 415-0311, and Scott Wrigglesworth can be reached at swrigglesworth@ascendanalytics.com or (937) 701-7205. We look forward to collaborating with you to provide this package of portfolio risk management modeling and services.

Best regards,

² Indicative and subject to scoping with SDCP. Costs for years 2 and 3 escalated per CPI.

³ Indicative and subject to scoping with SDCP. Costs for years 2 and 3 escalated per CPI.

⁴ Subject to scoping of SDCP requirements for various service including but not limited to portfolio management, risk management, resource planning, RFO valuation, RFO administration.



Gary W. Dorris, PhD

CEO

By signing below, San Diego Community Power enters into an Agreement with Ascend Analytics to proceed with the scope of work and respective compensation outlined in this proposal, as mutually agreed upon between Ascend and San Diego Community Power. The only terms and conditions applicable to this Agreement are those contained herein. Any other terms and conditions applied to this Agreement shall be mutually agreed upon between San Diego Community Power and Ascend Analytics and shall be expressly made in writing and duly signed by both parties. The party signing below warrants that they are duly authorized to sign on behalf of their respective organization:

**San Diego Community Power (SDCP)
(Signing for PowerSIMM Pilot Extension Only)**

By: _____

Name: _____

Title: _____

2. Appendix A: Ascend Approach & Market Intelligence

Price and Revenue Forecast Methodology

Ascend Analytics provides sub-hourly price level forecasts driven by the modeling of market fundamentals of supply and demand through our PowerSIMM modeling framework. PowerSIMM is an industry leading production cost and market simulation model used by leading utilities all over the US to make critical resource and portfolio management decisions. Unfortunately, traditional models were built to plan for the grid of the past, where renewables were a tiny part of the supply and dispatchable gas and coal dominated. They on load duration curves or at best chronological dispatch according to weather normalized shapes for renewables and prices. Now we are entering an era where renewables are becoming the new baseload with weather as the new fuel. As a result, market dynamics are changing as renewable intermittency drives increased volatility in energy prices and drives down market implied heat rates when zero variable cost renewables increasingly often serve the marginal system megawatt-hour. Energy prices now follow the net-load shape (load minus renewables), causing the so called “duck curve” as solar grows to dominate the grid.

Changing times call for more advanced modeling to support robust and resilient decisions in an increasingly uncertain world.

stack
relied
load,

An overview of the Ascend modeling framework is shown in Figure 7. Policy assumptions and macro variables drive fundamental variables to the PowerSIMM production cost model and these in turn determine the simulation parameter inputs the PowerSIMM price simulation engine produces hourly and sub-hourly prices.

Because the PowerSIMM framework includes the new drivers for variability in price at the hourly and sub-hourly level, we provide price projections with both average price and the variability in price evolving forward with changes in the supply stack. Thus, key drivers like renewable penetration rates and the amount of flexible generation are important determinants to the variability in prices.

Market Forecasts are accompanied by 20-year Hub price forecasts inclusive of Day Ahead Energy, Real Time Energy, Ancillary Services, Resource Adequacy/Capacity, in 5-minute and 15-minute intervals.

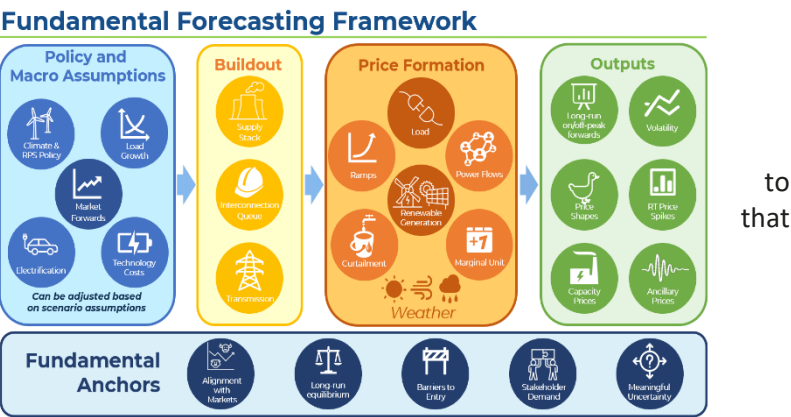


Figure 6. Overview of macro assumptions and market fundamentals used to generate hourly and sub-hourly price

3. Appendix B: Platform Description

Table 1. Ascend Platform Description

Platform Service	Description	Use
Valuation and Risk Analysis Service for CAISO	<p>Ascend’s valuation and risk analysis platform (PowerSIMM) analyzes and manages market and generation risk from approximately 1 month to 10 years out. The Ascend platform determines the future revenue streams and their risks on a project specific basis inclusive of adverse market conditions.</p> <p><u>Simulation Engine</u></p> <ul style="list-style-type: none"> Forecasted Monthly Forward Prices for Energy Weather Load Spot Prices Renewables (Wind & Solar) <p>Simulation of wind and solar production based on weather to align volumetric uncertainty of production with load and market prices.</p> <p><u>Price Forecasts</u></p> <p>Price forecasts for CAISO. Includes:</p> <ul style="list-style-type: none"> Hub DA and RT energy prices up to 20 years Ancillary services prices Capacity prices Basis DA and RT prices <p><u>Portfolio Management</u></p> <p>Output of PowerSIMM portfolio variables for term analytics:</p> <ul style="list-style-type: none"> Generation Modeling (thermal, hydro, pumped hydro, batteries, renewables, etc.) Fuel Modeling Cost of Supply 	<p><u>Analysis</u></p> <ul style="list-style-type: none"> Load with Renewable and Storage Long Term portfolio management (defined as simulations horizon from prompt month to 5 years) Model cost to serve load with market interactions Integrated portfolio modeling for physical assets, power purchase agreements, loads, and contracts <p><u>Commodities Modeled</u></p> <ul style="list-style-type: none"> Power Natural Gas Oil Coal Emissions (CO2, NOx, SO2) RECs Ancillaries Other Asset Related Components <p><u>Instruments Modeled</u></p> <ul style="list-style-type: none"> Swaps Shaped fixed-price swaps Futures Call/Put options Daily call/put options CRRs <p><u>Assets Modeled</u></p> <ul style="list-style-type: none"> Thermal Renewables Hydro Batteries Contracts Transmission <p><u>Spot & Forward/Forecast Prices</u></p> <ul style="list-style-type: none"> Markets for energy and ancillaries Ascend will harvest ISO and market prices, use Ascend CAISO Market Forecasts for 5+ years

	<ul style="list-style-type: none"> Hourly marginal cost of supply Ancillary service modeling Transmission modeling, inclusive of losses and fees. <p>PowerSIMM Portfolio Manager provides insight into the impact to both physical operations and system costs.</p> <p><u>Analytic Framework</u></p> <ul style="list-style-type: none"> Dispatch optimization Validation reporting Job management system 	
Platform Service	Description	Use
Reporting and Detailed Results Drill Down with the PowerCube	<p><u>Portfolio Planning Output</u></p> <ul style="list-style-type: none"> OLAP cube reporting to Excel OLAP cube export to the PowerBI Dashboard <p>Complete relational data cube which is seamlessly integrated into Microsoft Excel and Microsoft PowerBI.</p>	<p><u>Analysis</u></p> <ul style="list-style-type: none"> Output reporting for distribution of standard reports, generation of ad-hoc reports, summarized at monthly volumes and values, with ability to drill down to examine individual portfolio components to hourly level. Ascend can support the development of custom risk metric variables & custom reporting. Ability to extract hourly and sub-hourly model results for individual cases/scenarios.
Subscription Service	Description	Use
Heat Maps of historical and forecasted nodal prices, basis, and volatility for DA and RT	<ul style="list-style-type: none"> Access to Ascend Heat Maps Overlay areas of high/low solar weighted basis to assess project potential, assess market price volatility through congestion persistence. 	<ul style="list-style-type: none"> Identify nodes that are more/less promising for Battery valuation as a screening tool. <p>Determine optimal siting for potential future investments</p>

4. Appendix C: Validation Criteria for PowerSIMM Implementation

Ascend will use the following criteria for validating the features included in this proposed license, and SDCP shall use the same criteria during User Acceptance Testing (UAT). The tests will include only the functionality in the approved functional specifications. The tests will be conducted by SDCP business users, who have attended training sessions and participated as members of the project team. Any additional criteria and/or tests not included in this Appendix must be approved by both Ascend and SDCP prior to use in User Acceptance Testing.

Table 2. PowerSIMM Validation Criteria

Module	Attribute	Information Used to Evaluate	Expectation
Load	<i>Loads to be validated will be identified prior to implementation.</i> <ul style="list-style-type: none"> 		
	Model Fit	Model is not Overfitted/Underfitted	Model fit will be assigned by load class and zone both defined above (i.e., not individual loads). Will use training period of historical data defined above. Model demonstrates minimization of mean absolute error (MAE) and thus demonstrates negligible bias and low variance. To verify this, the testing period prediction should converge to testing period actual within 15% (between 0.85 and 1.15) of testing period for 90% of load items, excluding historical anomalies (i.e. hurricanes, outages, etc.) and the mean monthly value will converge within 1%. Mean model fit: (Actual Total Monthly Load – Simulated Total Monthly Load)/Actual Total Monthly Load <= 1%
	Seasonal load profile	Confidence intervals for daily average load by month	Simulated confidence intervals at percentiles 5 and 95 match historical confidence intervals within 10% on an around the clock basis (ATC).
	Hourly load profile	Confidence intervals for hourly load	Simulated confidence intervals at percentiles 5 and 95 match historical load shapes and are within 10% at the monthly level, ATC.
	Expected load (MWh)	Mean simulated load by month	Simulated mean monthly values match forecasted monthly values for expected energy within 1%.
	Expected Peak Demand	Mean simulated peak demand by month	Simulated mean monthly values match forecasted monthly values for peak demand within 1%.

Forward Price	<i>Forward prices to be validated will be identified prior to implementation.</i>		
	Uncertainty in future prices	Confidence intervals by delivery month	Simulated forward price monthly volatility matches input monthly volatility values.
	Correlation of related commodities	Simulated correlation matrix	Positive semi-definite input matrix matches simulated positive semi-definite output matrix using a PCA-based similarity test with a 0.9 similarity on average (including confidence intervals of estimation).
	Correlation of related commodities	Simulated correlation matrix	If non positive semi-definite input matrix is provided, simulated output matrix will match input matrix with 0.9 similarity on average (including confidence intervals of estimation)
	No arbitrage	Mean simulated forward price by delivery month	Mean simulated monthly price equals current market expectation for each delivery month within 1%.
	Sampling of Forward Simulations	Gross Margin at Risk <i>(or other appropriate metric)</i>	Ascend will simulate xx forward sims to achieve +/- 10% confidence interval for Gross Margin at Risk <i>[or other appropriate metric]</i> at the annual level.
Spot Price	<i>Spot/basis prices to be validated will be identified prior to implementation.</i>		
	Model Fit	Kolmogorov-Smirnov Test	Simulated spot prices achieve a p-value of 5% on average, by month and peak period <i>([client defined peak periods, 7x24, 5x16, etc.])</i> , for 90% of peak period-month combinations.
	Seasonal spot price profile	Expected profile converges to input profile (either historical profile or user-defined) by month	Will use a defined training period of historical data. Model demonstrates no bias and testing period prediction should converge to testing period actual within 2% of profile values at mean by month.
	Seasonal change in correlation of related commodities.	Simulated hourly heat rate confidence intervals by month.	Simulated confidence intervals at percentiles 5 and 95 match historical confidence intervals on average within 10%.
	No arbitrage	Mean simulated spot price by delivery month	Mean monthly simulated spot price equals the mean simulated forward price of the same commodity for all months within 1%.

5. Appendix D: Ascend Staffing

The following table lists Ascend staff for this project. Staff bios with qualifications and experience are available upon request.

Table 3. Select Ascend Staff

Name	Title	Role
Dr. Gary Dorris	President, CEO	Engagement Director
Dr. Allison Weis	VP Battery Storage	Optimization Lead
Dr. Carlos Blanco	Managing Director, Analytic Solutions	Risk Management Lead
Scott Wrigglesworth	Vice President, Operations & Strategy	Portfolio Management Lead
Michael Ballow	Director, Strategy & Analytics	Strategic Advisor / Modeling, Portfolio & Risk Management
Dr. Brent Nelson	Director, Forecasting and Market Fundamentals	Forecasting Lead
Dr. Brandon Mauch	Director, Resource Planning Analytics	Resource Planning Modeling
Devin Gaby	Sr. Manager, Software Services	Implementation Manager & Ongoing Services
Anthony Boukarim	Sr. Manager, Resource Valuation & Valuation	Modeling and analysis support, Planning
Arran Blattel	Manager, Model Support	Technical model support
Valerie Katz	Manager, Client Operations	Modeling and analysis support, Planning
Zach Brode	Manager, Analytics	Modeling and analysis support, Forecasting
Dr. Anand Govindarajan	Technical Product Manager	Modeling and analysis support, Portfolio Management
Logan Riber	Senior Energy Analyst	Modeling and reporting, Portfolio Management
Scott Fiedler	Senior Energy Analyst	Market Information and Data Management
Trevor Rehm	Senior Energy Analyst	Modeling and reporting, Portfolio Management
Ken Knoll	Senior Energy Analyst	Modeling and analysis, Portfolio Management
Scott Nicholson	Senior Energy Analyst	Modeling and analysis support, Planning
Quinn Borders	Energy Analyst II	Modeling and analysis support, QA
Alex Nesnidal	Renewable Energy Analyst	Modeling and reporting, Portfolio Management
Sameera Gudladona	Energy Analyst	Modeling and analysis support, Planning
Rebecca Guilfoyle	Energy Analyst	Modeling and analysis support, Planning

Tamar Moss	Energy Analyst	Modeling and analysis support, Client Services
CJ Cogizer	PowerBI Specialist	Analysis support, Reporting
Sid Matthew	Energy Analyst	Modeling and analysis support, Planning

6. Budget Tracker

Add On feature to help establish ease of reporting and clarity around monthly results for SDCP to track monthly portfolio performance against budget and proforma forecast studies. Ascend can deliver a budget variance in the form of the difference between actual and forecast via PowerBI reports. Additionally, Budget Tracker can track commercial financial results with ease to understand variance from expectation, advise promptly on year-to-date variance, and continuously report changes in year-to-go forecast period budget variance.

7. Appendix E: I – ISO Reports and Hub Price Forecasts

Table 4. ISO Reports and Hub Price Forecasts

<i>Hub/Zone Description</i>	ISO-NE	NY ISO	CAISO	ERCOT	MISO	PJM	SPP
Count of Primary Hubs/Zones	1	4 Hubs 10 zones	4	4	6 Hubs	6 Hubs	2 Hub
Combined Hubs/zones (homogenous regions)	1	4	4	4	6	6	2
Assumed Combinations	Mass	Zone A Zone G Zone J Zone K	SP-15 NP-15 MidC Palo Verde	North South Houston West	Illinois Indiana MN MS LA Michigan	Dom East N. IL West New Jersey AEP Dayton	South North
Nodal	✓	✓	✓	✓	✓	✓	✓
Underlying input assumptions	✓	✓	✓	✓	✓	✓	✓
Contemplated Update schedule	✓	✓	✓	✓	✓	✓	✓
Version number	✓	✓	✓	✓	✓	✓	✓
Day Ahead Energy	✓	✓	✓	✓	✓	✓	✓
Real Time Energy	✓	✓	✓	✓	✓	✓	✓

Ancillary Services⁵	✓	✓	✓	✓	✓	✓	✓
Resource Adequacy/Capacity	✓	✓	✓	N/A	✓	✓	✓
5-minute	✓	✓	✓	✓	✓	✓	✓
15-minute	N/A	N/A	✓	✓	N/A	N/A	N/A
Nodal Count	~ 1,300	~ 600	~ 14,000	~ 15,000	~ 2,800	~ 11,000	~ 13,500
Est. Next Forecast Vintage	July 2022	July 2022	Nov 2022	Nov 2022	Oct 2022	Aug 2022	Aug 2022

¹ISO-NE: Reg is ISO-wide, spin and non-spin are zonally priced. All ancillaries are real-time only.

NYISO: Zonal ancillaries with rules supporting sub-hourly repurchases of ancillaries and moves to serve RT energy.

CAISO: ISO-wide plus zonal adders (every location has the same base price, but zones will occasionally receive price adders for higher zonal demand for ancillaries.) Ancillaries are DA and RT, but standard rules preclude sub-hourly flipping to energy. Regulation Up and Down in CAISO.

ERCOT: DA regulation up, regulation down, spin, and non-spin and RT regulation up, regulation down, and spin

MISO: Ancillary prices are nodal with DA and RT.

PJM: ISO-wide ancillaries for RT only.

SPP: Zonal DA and RT prices with Regulation Up and Down.

8. APPENDIX F: PowerSIMM SaaS License Agreement General Terms and Conditions

I. Independent Relationship

In the performance of the work and services hereunder, Ascend Analytics shall act solely as an independent private contractor and nothing contained herein or implied shall construe the relationship as that of an employer/employee, partnership or principal and agent.

II. Conflicts of Interest

Ascend Analytics warrants that there is no conflict of interest or potential conflict of interest between Ascend Analytics' other agreements, if any, and the activities to be performed hereunder, and Ascend Analytics shall notify San Diego Community Power if a conflict of interest arises.

III. Consideration, Invoicing, Payment, and Term

As compensation to Ascend for the performance of all Services described in this Licensing Agreement (the “Agreement”), San Diego Community Power shall pay Ascend the fees outlined in Table 1. of the proposal. Invoices payments shall be due within 30 calendar days after San Diego Community Power’s receipt of such invoice. Unpaid invoices shall accrue late fee payments of 1.5%/month commenced upon overdue notification (net-30).

This Agreement shall commence upon the Effective Date (defined as the date of signature as effected by San Diego Community Power) and will have an initial expiration date equal to one year from the commencement date. The license may be renewed on an annual basis by payment of the annual fee (“Annual Fee”) on or before the license expiration date. Annual Fees shall be invoiced prior to license expiration and shall be subject to an increase equal to the percentage increase in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published 90 days prior to the anniversary date for the preceding 12 month period by the U.S. Department of Labor, Bureau of Labor Statistics. In the event the CPI reflects a negative adjustment, the annual contract rate will remain flat.

IV. Insurance and Taxes

Insurance. Both parties are responsible for maintaining their own insurance coverage, including, but not limited to health and medical, automobile, homeowners/renters (if any), and comprehensive insurance, which may be required by law in the jurisdictions where Ascend Analytics does business or performs services to this Agreement.

1.1. Terms and Provisions of Policies. All policies of insurance that this Agreement requires Ascend to maintain shall:

- 1.1.1. provide that, without thirty (30) days’ prior written notice sent to San Diego Community Power, they may not be canceled, or non-renewed;
- 1.1.2. with the exception of worker’s compensation/employer liability insurance and any professional liability insurance/errors and omissions insurance that may be required, be primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by any additional insured(s);
- 1.1.3. with the exception of worker’s compensation/employer liability insurance and any professional liability insurance/errors and omissions insurance that may be required, be endorsed to name the following as additional insureds: San Diego Community Power and its subsidiaries and affiliates; the directors, officers, employees, and agents of San Diego Community Power and its subsidiaries and affiliates; and the successors and assigns of all of the foregoing (the “**Additional Insureds**”);

- 1.1.4. as to policies required by this Agreement to name additional insureds, provide for severability of interests or cross liability as to all insureds (whether named or otherwise); and
 - 1.1.5. be written on an occurrence basis (except that any professional liability insurance that may be required may be written on a claims-made basis) and issued by insurance carriers reasonably acceptable to San Diego Community Power.
- 1.2. **Specific Coverages.** Ascend shall maintain the following insurance policies:
- 1.2.1. Commercial General Liability, on an occurrence basis, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit of Two Million Dollars (\$2,000,000). Such policy shall contain a waiver of subrogation endorsement in favor of the Additional Insureds;
 - 1.2.2. Comprehensive Automobile Liability, with a combined single limit of One Million Dollars (\$1,000,000). Such policy shall contain a waiver of subrogation endorsement in favor of the Additional Insureds;
 - 1.2.3. Workers' Compensation, in statutorily required amount(s), and employer's liability insurance of not less than One Million Dollars (\$1,000,000) for each instance; provided, that if Ascend is not required by law to, and does not, carry Workers' Compensation Insurance, Ascend shall execute and deliver to San Diego Community Power a Worker's Compensation Insurance waiver provided by San Diego Community Power. Such policies shall contain a waiver of subrogation; and
 - 1.2.4. Umbrella Excess Liability, of not less than Two Million Dollars (\$2,000,000). Such coverage shall be on a per "occurrence" basis and shall contain a waiver of subrogation endorsement in favor of the Additional Insureds.
- 1.3. **Insurance Coverage; Miscellaneous.** Notwithstanding anything to the contrary in this Agreement, the liabilities of Ascend under this Agreement shall not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverages.
- 1.4. **Subrogation Waiver.** Except as otherwise provided in this Article IV, San Diego Community Power and Ascend waive all subrogation rights against (1) each other, and (2) any of the other's subsidiaries, affiliates, subcontractors (of any tier), agents, and employees for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Services.

Taxes and Levies. As independent entities, both parties are responsible for their own local, state, federal or other taxes or levies that may be due on the fees paid under this Agreement, including Social Security, value added (VAT) and payroll taxes. Such taxes will not be reimbursed by San Diego Community Power, nor does San Diego Community Power accept any responsibility with respect to non-payment of any such taxes which may be due.

VI. Security, Safety and Health Regulations

Ascend Analytics agrees to comply with all applicable institutional, local, state and national health and safety regulations when performing any work or services hereunder.

VII. Indemnification

To the fullest extent permitted by law, each Party (an “Indemnitor”) shall defend, indemnify and hold harmless the other Party, its affiliates, members, partners, contractors, subcontractors and agents, and the directors, shareholders, officers, agents and employees of each of them, from and against all losses, damages, liabilities, and expenses (including court costs and reasonable attorneys' fees) which are caused by or arise out of the fault or negligent acts or omissions, whether active or passive, of the Indemnitor in connection with activities or Services under this Agreement, or result from any breach by the Indemnitor of any provision of this Agreement. Notwithstanding the forgoing, no such indemnification shall be provided by San Diego Community Power to Ascend for fraudulent or illegal acts or acts of willful misconduct of Ascend in connection with activities or Services provided pursuant to this Agreement.

VIII. Limitation of Liability

In no event shall either Party, or an officer, director, member, partner, shareholder, employee, agent or affiliate of either Party, be liable for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever arising out of this Agreement, including damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise; provided, that the limitation of liability imposed by this Article VII shall not apply to (a) Ascend's indemnity obligations set forth in this Agreement as they relate to claims by third parties or (b) losses which arise or result from fraud, willful misconduct, or gross negligence of Ascend or any subcontractor or vendor of Ascend.

IX. Confidential Matters and Proprietary Information

Confidential Information. Ascend acknowledges that as a result of Ascend's retention by San Diego Community Power, Ascend will become informed of, and have access to information deemed to be confidential by San Diego Community Power. It is hereby agreed that all information provided to Ascend whether orally or in writing in relation to (i) San Diego Community Power and its business, (ii) specific projects or entities owned (in whole or in part) by San Diego Community Power, and (iii) the business plans and activities of San Diego Community Power and its affiliates shall be "Confidential Information". Notwithstanding the above, information shall not be considered confidential under this Agreement if (a) it is or becomes publicly available through no act or omission of Ascend or its employees or agents, or (b) was already known to Ascend at the time of disclosure, or (c) is required to be disclosed by a court or regulatory agency acting within its authority; provided, however, that Ascend shall first inform San Diego Community Power of the disclosure requirement to allow San Diego Community Power to challenge the disclosure requirement should San Diego Community Power wish to do so.

Use and Disclosure. All Confidential Information provided by or on behalf of San Diego Community Power remains the sole property of San Diego Community Power. Ascend shall hold and maintain such Confidential Information

in strictest confidence and in trust and shall use such Confidential Information only for the specific purpose for which it was disclosed or delivered to Ascend. For a period of three (3) years after the date of this Agreement, Ascend shall not disclose such Confidential Information to any person or entity (except as permitted under this Article VIII). Ascend shall, at Ascend's sole cost and expense, take all necessary actions and precautions to protect the confidentiality of such Confidential Information and any documents or other materials containing any Confidential Information, and shall immediately notify San Diego Community Power in writing upon its discovery of any such unauthorized use or disclosure of such Confidential Information.

Disclosure to Employees. Ascend shall restrict access to Confidential Information only to employees of Ascend who clearly need such access in order to participate in Ascend's business relationship with San Diego Community Power and who have been instructed to comply with the terms of this Agreement.

Remedies. Ascend acknowledges that the use or disclosure of Confidential Information in violation of this Agreement may cause substantial and irreparable injury to San Diego Community Power and that San Diego Community Power may obtain injunctive or other equitable relief to prevent such use or disclosure.

Delivery upon Request. Immediately upon the termination or expiration of Ascend's use of Confidential Information, and upon San Diego Community Power 's request, Ascend will delete, destroy or return all records, notes, analyses, memoranda, drawings and other written or tangible materials, documents or media containing any Confidential Information of San Diego Community Power, including all copies and reproductions thereof, except as may be present on computerized backup systems, provided such Confidential Information is deleted from local hard drives and no attempt is made to recover such Confidential Information from servers or back-up sources, and provided any such retained Confidential Information shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination or expiration of this Agreement.

Data Retention within PowerSIMM. San Diego Community Power recognizes that output files, modeling case studies, and case input assumptions informing San Diego Community Power's modeling results will be available for access for no longer than two (2) years from the date upon which the studies were generated within PowerSIMM.

X. Ownership of Deliverables

San Diego Community Power will have exclusive rights to use the analytical deliverables, but will not have rights to resell or redistribute the delivered analytical products.

San Diego Community Power agrees that all rights, title, and interest in and to all models, tools, systems, or processes used or developed by Ascend in the course of providing Services pursuant to this Agreement, including,

but not limited to, patent rights, trade secrets, mask works, and copyrights, shall remain exclusively with Ascend without further consideration; provided that {Client} may retain and use a copy of any studies, reports, and analyses for its sole use.

XI. Termination of Agreement

San Diego Community Power shall have the right to terminate this Agreement at any time by providing seven (7) days prior written notice to Ascend Analytics. Ascend Analytics will be reimbursed for documented costs to date, at the agreed rates, plus reasonable costs necessary to terminate the project, and will not be required to refund any prepaid licensing fees. Ascend has the right to withdraw services at any time by providing seven (7) days prior written notice to San Diego Community Power, and refund any additional amounts paid by San Diego Community Power for services due but not rendered by Ascend Analytics under this Agreement.

XII. Notices

Any notice required to be given hereunder shall be deemed to have been sufficiently given either when served personally, sent by first class mail addressed to the Parties at the addresses set forth in this Agreement, or transmitted via email to the other Party at its address indicated below or at such other address as either Party may designate for itself in a written notice to the other Party.

If to Ascend:

If to San Diego Community Power:

Ascend Analytics LLC
1877 Broadway
Suite 706
Boulder, CO 80302
Attention: Gary Dorris
Telephone: 303-415-1400
gdorris@ascendanalytics.com

San Diego Community Power PO BOX 12716 San Diego, CA 92101
Attention: Andrea Torres atorres@sdcommunitypower.org

XIII. Waiver and Governing Law

Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights, or of any other rights hereunder. This Agreement shall be interpreted in accordance with the laws of Colorado without regard to the choice of law rules thereof.

IVX. Intellectual Property Indemnity

During the term of the Agreement, Ascend shall release, defend, indemnify, and hold harmless San Diego Community Power from and against any and all causes of action, claims, damages, liabilities, judgments, settlements, losses, costs, or expenses of any kind, including reasonable attorneys' fees, arising out of or related to Ascend's infringement upon or misuse of the intellectual property rights of any third party. In addition, if the use of the Services infringes or is enjoined, or Ascend believes it is likely to infringe or be enjoined, Ascend may, at its sole option: (a) procure for San Diego Community Power the right to continue use of the Services as furnished; or (b) modify the Services to make them non-infringing, provided that they still substantially conform to their original intended use. The intellectual property indemnity provided herein does not apply to the extent (where, but for the following, there would be no infringement) (a) the alleged infringement arises from any use of the Services not in accordance with this Agreement or (b) any unauthorized modification of the Services. This section states Ascend's sole and exclusive liability and San Diego Community Power's sole remedies for any threatened or actual infringement of proprietary rights.

XIV. Force Majeure

Neither party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by force majeure such as, but not limited to, riots, civil commotions, wars, freight embargo, lock-outs, hostilities between nations, governmental laws, orders or regulations, actions by the government or any agency thereof, storms, fires, sabotages, explosions or any other contingencies beyond the reasonable control of the respective party and of its sub-contractors ("Force Majeure"). If such Force Majeure events affects a party's ability to perform an obligation under the Contract, the affected party shall immediately inform the other party of such circumstances together with documents of proof, no later than ten (10) business days after having knowledge of the Force Majeure. A party will be deemed to have invoked Force Majeure from the date when that party gives written notice of the event of Force Majeure in accordance with this clause. The affected party shall provide to the other Party reports with respect to the Force Majeure at such intervals as the other party may reasonably request while the Force Majeure continues and the performance of obligations hereunder shall be suspended during, but not longer than, the period of existence of such cause and the period reasonably required to perform the obligations in such cases. The affected party shall take commercially reasonable steps to mitigate damages, including sourcing products and services from alternative suppliers or using alternative methods, arising out of the force majeure event. The parties shall have the right to terminate a contract with written notice should the force majeure event last more than 6 months.



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director and Kenny Key, Sr. Contracts Manager

Via: Karin Burns, Chief Executive Officer

Subject: Long-Term Resource Adequacy Agreement with EnerSmart

Date: October 26, 2023

RECOMMENDATION

Approve 10-year, 6MW Resource Adequacy Agreement with EnerSmart Alpine BESS LLC and authorize the CEO to execute the Agreement

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term agreements of at least 10 years in duration are integral components of its portfolio. Long-term resource adequacy agreements provide facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term agreement that SDCP signs with a developing facility will underpin a new, incremental project.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026. Additionally, SDCP has set internal targets to procure 600MW of capacity from local wholesale projects by 2035.

The agreement proposed originated from an offer SDCP received in 2022 via its Local RFI Solicitation. SDCP engaged with EnerSmart after short-listing the projects and has reached terms mutually agreeable to both parties. SDCP's board of directors approved an agreement with EnerSmart Alpine BESS LLC at the board meeting on September 28th, 2023. However, that contract incorrectly had the project classified as a 2-hour battery system, which would only provide 3 MW of resource adequacy. The project will be a 4-hour battery system providing 6 MW of resource adequacy. The agreement has been revised to correct all reference to 3 MW of resource adequacy to 6 MW.

ANALYSIS AND DISCUSSION

Staff negotiated the attached Long-Term Resource Adequacy Agreement for the purchase of resource adequacy from a stand-alone battery-storage project being developed by EnerSmart in San Diego County.

Resource Adequacy would help with SDCP's internal Local Procurement targets as well as external resource adequacy and mid-term reliability compliance requirements. This project would help with local resource adequacy obligations.

Below is additional information regarding EnerSmart and the draft agreements.

Background on EnerSmart:

- EnerSmart is a local developer and has a management team with decades of experience in project development
- EnerSmart is planning to develop over 160 MW of stand-alone storage in San Diego across 10 projects

Contract Overview for the Alpine project:

- Product: Local Resource Adequacy, 6 MW
- Projects: 6 MW/ 24 MWh 4-hour lithium-ion battery energy system
- Project location: Alpine
- Guaranteed Initial Resource Adequacy Delivery Date: 2/15/25
- Contract term: 10 years
- Pricing:
 - BESS – Fixed price for resource adequacy
- SDCP receives financial compensation if EnerSmart fails to meet certain performance requirements

Community Benefits:

- EnerSmart plans to use local labor when possible and union labor on portions of the project
- EnerSmart commits to prevailing wage for the project
- The project benefits the community by providing clean energy to the grid when it's needed the most, helping to reduce the local risk of brownouts and blackouts.
- The project provides local storage reducing the need for additional transmission to import energy



COMMITTEE REVIEW

N/A

FISCAL IMPACT

The competitive resource adequacy pricing of the agreement is confidential, but the long-term purchase of resource adequacy will provide SDCP with significant value and cost certainty over the term of this agreement.

ATTACHMENTS

- A. Long-Term Resource Adequacy Agreement with EnerSmart Alpine BESS, LLC
(redacted version for commercially sensitive information)



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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Alpine BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Alpine
Location:	2436 Alpine Blvd Alpine, CA 91901
CAISO Resource ID:	Forthcoming
Unit SCID:	ASMT
Unit NQC:	6 MW
Unit EFC:	6 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	April 2022
Interconnection Agreement executed	forthcoming
Expected Construction Start Date	March 2024
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	February 15, 2025

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **EnerSmart Alpine BESS LLC**, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Unit; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the 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 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “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 by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “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 a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least [REDACTED] from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “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 having a Credit Rating of at least [REDACTED] with an outlook designation of [REDACTED] with an outlook designation of [REDACTED] from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “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 a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 6 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

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

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

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

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

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3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

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

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.12 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall resume performance of its obligations under this Agreement as soon as reasonably practicable. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) such Party consolidates or amalgamates with, or merges with or into, 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 fails 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; or

(j) 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 either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, 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:

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

(ii) the issuer of such Letter of Credit becomes Bankrupt;

(iii) 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;

(iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(v) 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;

(vi) such Letter of Credit fails or ceases to be in full force and effect at any time;
or

(vii) 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.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, 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 due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

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 ten (10) days of receipt of 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; *provided, however*, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

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5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement 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, with notice of the objection given to the other Party. 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 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.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. 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.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement 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 Sections 3.8 or 3.9, 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.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

(a) 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 (provided that such court is limited within a venue permitted in law and under the Agreement), (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; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) 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 ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, 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.

(b) 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 Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security 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 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED]

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence.

(ii) 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.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard 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 Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c)



(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Designated RA Capacity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

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. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

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17.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit G. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

17.6 Mobile-Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

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;

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(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 Article, 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 terms “include” and “including” mean “include or including (as applicable) 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;

(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 shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning 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.

[Remainder of Page Intentionally Left Blank]

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

**ENERSMART ALPINE BESS LLC, a
California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement 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, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration 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 Articles 14(b) and 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 Expiration 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-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (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 [Buyer], a California joint powers authority, [Buyer 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 _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

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 we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers 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 [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Agreement dated [date] (“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 that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“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.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 6 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 6 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 6 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Alpine

Resource type: Battery Energy Storage

Nameplate capacity: 6MW / 24 MWh

Location: Alpine, CA

Unit physical address: 2436 Alpine Blvd Alpine, CA 91901

Unit elevation: 1,800'

Unit latitude: 32 50' 07" N

Unit longitude: -116 45' 33"W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: ALPINE_6_N005

CAISO Resource ID: Forthcoming

Substation: Alpine

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ENERSMART ALPINE BESS LLC, a California limited liability company ("Seller")	SAN DIEGO COMMUNITY POWER, a California joint powers authority ("Buyer")
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: n/a Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

SAN DIEGO COMMUNITY POWER

Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Marketing and Public Relations

Date: October 26, 2023

RECOMMENDATION

Approve change in appointment of SDCP Alternate to the City of La Mesa Environmental Sustainability Commission.

BACKGROUND

The City of La Mesa's Environmental Sustainability Commission serves as an advisory body to their City Council on how actions and policies of the city may preserve and enhance the quality of La Mesa's environment. The Commission also serves to address the effects of climate change and assist in the identification of measures that will improve environmental sustainability in La Mesa and the region.

The Commission is made up of seven members as residents of the City of La Mesa with voting privileges and six members as advisory in nature from the business community without voting privileges. The six nonvoting members are made up of representatives from the City of La Mesa's water utility, franchise waste and recycling hauler, electricity and gas utilities, and high school and elementary/middle school district.

Early in 2021, La Mesa staff requested that SDCP staff participate as a non-voting member of the Commission after it amended Chapter 2.85.010 of the La Mesa Municipal Code to add SDCP as a non-voting representative of the Environmental Sustainability Commission, pending an appointment from the Board of Directors of San Diego Community Power.

Doing so required a vote of the SDCP Board of Directors, so at the April 2021 regular meeting, the Board approved the first appointments of SDCP staff to serve as members.

In September 2022, the Board approved the appointments of Public Affairs Director Jen Lebron and then-Public Outreach Associate Victoria Abrenica to serve on the commission as the Regular and Alternate members, respectively.

ANALYSIS AND DISCUSSION



The Public Affairs Department of SDCP has had Community Engagement Manager Xiomalys Crespo join the team while Abrenica has moved into a Program Associate position with the Programs Department. Given these new roles, staff recommends a change in appointment from Abrenica to Crespo as the alternate.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Draft Appointment Letter from SDCP





815 E Street, Suite 12716
San Diego, CA 92112
sdcommunitypower.org

October 26, 2023

City of La Mesa
Mayor and City Council
8130 Allison Avenue
La Mesa, CA 91942

RE: SDCP Alternate to the Environmental Sustainability Commission

Dear Mayor and City Council,

On behalf of San Diego Community Power (SDCP), Xiomalys Crespo, Community Engagement Manager has been appointed to the La Mesa Environmental Sustainability Commission as SDCP's alternate representative. She will replace Victoria Abrenica, who was appointed in September 2022.

Sincerely,

Karin L. Burns
Chief Executive Officer





SAN DIEGO COMMUNITY POWER Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$550,000 for Legal Services for Power Procurement

Date: October 26, 2023

RECOMMENDATIONS

Approve the amended and restated Engagement Letter with Keyes & Fox LLP to increase the not-to-exceed amount to \$550,000 and authorize the Chief Executive Officer to execute the agreement.

BACKGROUND

Keyes & Fox LLP has extensive experience supporting community choice aggregators in energy contracting and negotiations.

On February 17th 2022, SDCP entered into a Engagement Letter with Keyes & Fox LLP ("K&F") with respect to the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers.

Subsequently, SDCP executed an amendment to the Engagement Letter on June 15th, 2022, after approval by the SDCP Board of Directors. This amendment superseded and replaced in its entirety the February 17th, 2022 Engagement Letter. This amendment had a not-to-exceed amount of \$250,000.

In July 2023, Keyes and Fox amended the Engagement Letter on July 17th, 2022. After approval by the SDCP Board of Directors. This amendment superseded and replaced in its entirety the June 15th, 2022 Engagement Letter. This amendment had a not-to-exceed amount of \$400,000.

ANALYSIS AND DISCUSSION

Staff recommends executing the third amendment and restated Engagement Letter with K&F. The proposed agreement would increase the combined not-to-exceed amount to \$550,000 (and increase of \$150,000) through Dec. 31, 2023 due to higher than expected

requirements of counsel due to several ongoing procurement efforts. This will allow staff to continue working with K&F on several negotiations that are currently active and which staff expects to work on throughout 2023.

SDCP issued an RFO for legal services on September 8, 2023 related to legal services to assist SDCP with the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers. That RFO will allow SDCP to select procurement counsel (and potentially backup procurement counsel) to begin engagement January 1, 2024. This amended with K&F would ensure there is not a gap in representation prior to January 1, 2024.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

Cost of this action includes a total amount not-to-exceed \$550,000 through December 31, 2023, which is an increase of \$150,000. Funding for the increase is included in the proposed FY24 budget, which staff will revisit during the mid-year budgeting process to ensure previous expectations remain appropriate.

ATTACHMENTS

Attachment A: Engagement Letter Between Keyes & Fox LLP and San Diego Community Power



October 20, 2023

Attn: Mr. Byron Vosburg
San Diego Community Power
815 E Street, Suite 12716
San Diego, CA 92112

RE: Engagement Letter Between Keyes & Fox LLP and San Diego Community Power

Keyes & Fox LLP (“K&F”) welcomes the opportunity to continue representation of San Diego Community Power, a California joint powers authority, (“SDCP”) with respect to the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers (referred to herein as “Legal Services”). This Engagement Letter excludes work that K&F is performing for SDCP under a separate joint representation agreement and replaces the engagement letter dated July 17, 2023. This Engagement Letter describes the basis of the attorney-client relationship between K&F and SDCP with respect to the Legal Services, along with an explanation of how K&F will bill for those services.

1. Scope of Engagement

Pursuant to this engagement letter, K&F agrees to represent SDCP as its client with regard to the Legal Services described above. Keyes & Fox will do its utmost to serve SDCP effectively, provide Legal Services in an efficient manner, and respond promptly to SDCP’s inquiries.

K&F has run a conflict check as it relates to the contemplated Legal Services and has not found any direct conflicts with undertaking them. If a conflict arises that may impact our ability to provide SDCP with effective representation, including with respect to negotiations that may involve current or former K&F clients as counterparties, we will promptly bring that conflict to SDCP’s attention. If you have any concerns regarding any relationship K&F may have with particular companies, organizations or individuals, please bring those concerns to our attention.

K&F will coordinate the provision of the Legal Services with Byron Vosburg as the designated representatives of SDCP, or with whomever he may specifically delegate that authority. We understand that Mr. Vosburg have the authority to make decisions on behalf of SDCP in connection with the Legal Services, and we are relying on that understanding.

2. Confidentiality of Communications and Work Product

It is in SDCP’s interest to preserve confidentiality of all communications with K&F and such work product related to the Legal Services not intended for use with third parties. If SDCP discloses any of our communications, it jeopardizes the privileged nature of the communications or work product. Accordingly, we advise our clients to take care not to disclose privileged information or work product not intended for use with third parties to any third-party person or entity.

3. Fees, Expenses, Invoicing, and Retainer

By signing this Engagement Letter, SDCP agrees to pay K&F for all professional fees and out-of-pocket expenses related to the Legal Services, according to the terms set forth below. Compensation under this Engagement Letter shall not exceed five hundred fifty thousand dollars (\$550,000) without prior authorization by SDCP.

a. Professional Fees

K&F will keep an hourly total of time spent on the Legal Services. Work will be performed at the hourly rates set forth in the Rates for Professionals provided in Attachment A to this Engagement Letter, which is incorporated by reference herein. Attachment A lists those persons we anticipate may work on the Legal Services. In addition to the K&F attorneys listed in Attachment A, the assistance of other K&F attorneys and/or staff may be enlisted from time to time as determined necessary for the provision of the Legal Services.

It is K&F's policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in Attachment A are 2023 rates. K&F shall not increase hourly rates charged for work performed during calendar year 2023 Legal Services above those listed in Attachment A. K&F's practice is to charge for travel time, as discussed in Attachment A.

Mr. Fox and Ms. Cho will be the lead K&F attorneys working with you in connection with the Legal Services. Mr. Fox and Ms. Cho may utilize the services of other K&F attorneys in connection with this matter. By entering into this Engagement Letter, you consent in writing to Mr. Fox and Ms. Cho serving as the lead attorneys in this matter and to Mr. Fox's and Ms. Cho's assignment, with authorization by SDCP, of work on this matter to the other persons listed in Attachment A.

b. Expenses

Expenses may be incurred in connection with the Legal Services. K&F will bill for all costs, disbursements, and expenses in addition to our hourly fees. Costs and expenses include messenger and other delivery fees, copying and reproduction costs, costs for travel including mileage and parking, and similar expenses. Expenses will be billed at actual cost.

c. Invoices and Payments

K&F will invoice SDCP at the beginning of each month for Legal Services during the prior calendar month. Invoices will list the matter worked on and provide information on the dates of service, time involved, person responsible and activity undertaken. K&F will use best efforts to respond to requests for special invoice formats. Upon receipt of properly prepared invoicing, SDCP shall pay K&F within thirty (30) calendar days for services provided in accordance with this Engagement Letter.

4. Termination of K&F's Representation

Either SDCP or K&F may terminate K&F's representation of SDCP at any time and for any reason. At the time K&F's representation of SDCP concludes, all unpaid fees and costs for work performed by K&F become due and payable. If at that time SDCP does not request the return

of files related to the Legal Services, K&F will retain such files for a period of three (3) years, after which K&F may have the files destroyed.

5. Miscellaneous

This letter is the entire agreement between SDCP and K&F concerning the Legal Services and supersedes all prior or contemporaneous agreement between SDCP and K&F, whether written or verbal, for the Legal Services. This agreement and the scope of work provided under it may be amended from time to time by mutual agreement among K&F and SDCP. California law will govern this agreement and any subsequent amendments.

6. Conclusion

If the terms of K&F's representation as explained in this letter are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions.

We look forward to our representation of SDCP.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin Fox", is positioned above the printed name.

Kevin Fox, Partner
Keyes & Fox LLP

By signing this letter, the signatory affirms that he or she understands and agrees to bind his or her company to the terms set forth in this Engagement Letter. This agreement shall not take effect, and K&F shall have no obligation to provide the work described herein, until SDCP has returned a signed copy of this letter.

San Diego Community Power

I have read the foregoing letter, understand it and agree to it on behalf of SDCP.

By: _____
[Name]

Title: _____

Date: _____

Attachment A

Rates for Professionals

Hourly Rates and Other Terms

<i>Kevin Fox, Partner</i>	<i>\$480</i>
<i>Theresa Cho, Counsel</i>	<i>\$530</i>
<i>Alexandra Haggerty, Associate</i>	<i>\$330</i>
<i>Julia Kantor, Associate</i>	<i>\$300</i>
<i>Beren Argetsinger, Partner</i>	<i>\$310</i>
<i>Alicia Zaloga, Paralegal</i>	<i>\$120</i>

Firm Travel: Travel time is billed at the one-half of the listed hourly rate. Every effort will be made to work productively on the Legal Services during travel. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Fiscal Year End 2023 Financial Audit Progress Report Presentation
Date: October 26, 2023

RECOMMENDATION

Receive and File Fiscal Year End 2023 Financial Audit Progress Report Presentation.

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (SDCP) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021.

Section 4.6.14 of the JPA specifies the Board of Directors (Board) shall arrange for an annual independent fiscal audit.

Section 5.4 of the JPA specifies the Board shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The section further specifies that the Treasurer shall cause an independent audit(s) of the finances of SDCP to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

Section 7.2.2 of the JPA additionally specifies that the SDCP Board shall contract with a certified public accountant to make an annual audit of the financial statements of SDCP, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

On July 1, 2021, SDCP entered into a professional services agreement with Pisenti & Brinker to perform its annual audit for FY 2020-21. On July 1, 2022, SDCP exercised an option in the professional services agreement to extend the term from June 30, 2022, to June 30, 2023, to conduct its annual audit for FY 2021-22.

Subsequently, On July 20, 2023, SDCP exercised an option in the professional services agreement to extend the term from June 30, 2023, to June 30, 2024, to conduct its annual

audit for FY 2022-23. Pisenti & Brinker is a firm with extensive experience auditing CCA's throughout California, as well as other local government entities.

ANALYSIS AND DISCUSSION

Staff prepared a presentation describing the audit process and the preliminary results. The full financial audit report for FY 2022-23 will be presented to the FRMC on November 9, 2023, and reviewed by the Board on November 16, 2023.

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on October 19, 2023.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Not applicable





SAN DIEGO COMMUNITY POWER Staff Report – Item15

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs
Sheena Tran, Senior Program Manager

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regional Energy Network Formation Progress

Date: October 26, 2023

RECOMMENDATION

Receive and file an update on Regional Energy Network (REN) formation progress.

BACKGROUND

One of the Programs Team's FY 2023-24 annual priorities is to lead initial steps in a regional effort to develop a Regional Energy Network (REN) in San Diego. The approval of a REN in San Diego by the California Public Utilities Commission (CPUC) would allow access to funds to administer and implement energy efficiency (EE) programs focused on underserved and hard-to-reach residents, businesses, and public agencies in the region. Additionally, this effort achieves several intended goals for establishing SDCP, as stated in the Joint Powers Agreement (JPA), including '[pursuing] purposeful and focused investment in communities of concern, ... workforce development, and policies and programs centered on economic, environmental, and social equity.'

The energy efficiency programs offered by the RENs vary and are designed to meet the needs of its region while filling gaps and focusing on hard-to-reach customers. REN programs are intended to be complementary to IOU administered programs (regional and statewide) and coordination is required among Program Administrators to avoid customer confusion. San Diego Gas & Electric currently offers a robust EE program portfolio, with a 4-year ~\$330M EE portfolio approved by the CPUC in June 2023.

SDCP Staff presented and introduced the topic of a REN in San Diego at the May 26, 2022 Board of Directors meeting as an option to access CPUC funding for customer energy programs. SDCP Staff presented and identified forming a REN as one of the FY 22-23 Programs Department priorities during the New Board of Directors Orientation meeting on January 18, 2023. SDCP Staff presented an update on the progress of the REN formation at the February 2023 meetings of the Community Advisory Committee and the Board of Directors. In September 2023, SDCP Staff presented a progress update

to include a description of each of the draft programs to the Community Advisory Committee.

ANALYSIS AND DISCUSSION

Progress Update

In line with the initial timeline identified when the REN formation process began, SDCP staff is on track to submit a Business Plan Application to the CPUC by December 2023. To support this timeline, between February 2023 and September 2023, SDCP Staff conducted the following activities:

Activity	Outcome
Released Request for Proposal for professional services to support Business Plan Application development	Selected a consultant to support Business Plan Application development
Developed draft governance structure and presented to regional stakeholders for feedback	Received positive feedback from San Diego Regional Climate Collaborative (SDRCC) Regional Energy Resilience Working Group members
Finalized governance structure	Received confirmation via a letter of support from the County of San Diego Office of Sustainability and Environmental Justice to be the second public agency in the SDREN governance
Ongoing coordination with SDG&E	Collaborative discussions to identify gaps in existing programs that would be appropriate for new REN programs to fill and programs that are complementary to existing SDG&E programs
Met with CPUC Energy Division (ED) Staff	Informed CPUC of our intent to submit an application and asked clarifying questions. Provided updates on regional effort to submit a Business Plan Application
Completed Market Assessment	Identified sectors most in need of energy efficiency programs best served by a future REN
Stakeholder engagement	Presented to regional stakeholders for feedback on program design to ensure program offerings will meet customer needs

Activity	Outcome
Drafted an initial program list for stakeholder feedback	Developed and presented a draft program list for feedback to multiple regional stakeholders
Began drafting Business Plan Application	Developed draft foundational components of a Business Plan Application to comply with CPUC requirements including: <ul style="list-style-type: none"> - A description of its new and unique value to contribute to California's energy, climate, and/or equity goals. - A description of its proposed governance structure. - A proposed set of energy savings targets. - A proposed set of goals and metrics.

REN Governance Structure and Target Sectors

Based on the results of the initial eight months of stakeholder engagement and the consultant-led Market Assessment, SDCP Staff have identified the ideal and preferred governance structure and sectors for the San Diego REN programs to target. The Business Plan Application must include the proposed governance structure and sectors. As with all other elements of the Business Plan Application, the governance structure is subject to CPUC approval.

When considering different options for the governance, Staff sought a structure that (1) satisfies the CPUC requirement for new RENs to represent at least two local government entities; (2) allows for the expeditious distribution of resources to underserved communities, and (3) includes a forum for ongoing regional discussions. During the evaluation, Staff analyzed the structures of the five existing RENs and conducted interviews with Staff at the agencies involved. Recommendations included implementing a structure that enables streamlined decision-making process, leverages existing organizational processes, and limits unnecessary bureaucracy.

The proposed San Diego REN governance structure identifies several key functions as shown in the image below.





High-level roles and responsibilities for the key elements are as follows:

- Oversight and Administration (SDCP and County of San Diego): Provide portfolio-level vision and strategy; enact program changes during portfolio cycle; oversee future Business Plan development.
- Lead Program Administrator (SDCP): Responsible for all fiscal, regulatory, procurement and program management.
- Advisory Committee (TBD): Advise on program outreach and enrollment, provide feedback on program evaluation reports, and provide recommendations on program improvements. Members may include local and regional governments as well as community-based organizations.
- Program Operations Teams (TBD): Oversee day-to-day program operations; primarily consist of program managers and 3rd party implementers.

SDCP Staff oversaw the development of a market assessment to determine existing EE programs available in the region. The analysis included SDGE-managed EE and related workforce development programs as well as statewide EE programs. Based on the market assessment, the following sectors and associated target participants have been identified as most beneficial for a REN to develop programs under:

Sector	Program's Target Participants
Workforce, Education & Training	High School students, adult workforce, and employers
Codes & Standards	City and County permitting authorities
Residential	Homeowners, renters, property owners, tenants
Commercial	Small and medium businesses
Public	All public agencies within San Diego County

Programs by Sector:

The following section outlines the proposed programs for each sector. Each program lists a brief description including sample offerings as well as the target program participants.



Workforce Education and Training (WE&T)

Programs to support the long-term success of the energy efficiency market by providing education and training.

- WET Program 1
 - **Target Participants:** High school students
 - **Description:** Provide exposure to green careers, enrollment in college courses and connections with employers
 - **Sample offerings:** One-on-one career pathway assistance, dual enroll in STEM college courses at no cost, paid internship, wraparound services
- WET Program 2
 - **Target Participants:** Adult workforce
 - **Description:** Provide training and connect participants with jobs in clean energy economy
 - **Sample offerings:** Training and certification course(s) at no cost, networking opportunities, on-the-job training, wraparound services
- WET Program 3
 - **Target Participants:** Employers
 - **Description:** Work with employers to understand career pathways and provide assistance to ensure employees move through pathways.
 - **Sample offerings:** Stipends to participate in trainings; training program development; training policy development

Commercial

Programs to assist small and medium businesses and commercial property owners access technical assistance, energy efficiency measures, and facility assessments.

- Commercial Program 1
 - **Target Participants:** Small and medium businesses (SMBs)
 - **Description:** Raise awareness and increase adoption of EE practices and measures; connect a dedicated energy coach to educate SMBs on the value of EE, support access to funding and financing, facility assessments, offer technical assistance and direct install. Incorporate California Green Business Network support.
 - **Sample Measures:** Smart thermostats, HVAC tune-up, LED lighting, controls, behavioral, heat pumps, duct sealing, appliances, faucet aerators, auto door closers, VFDs, window film, smart plugs
- Commercial Program 2
 - **Target Participants:** Small corner stores and food donation centers
 - **Description:** Refrigeration replacement (direct install)
 - **Sample Measures:** Refrigeration and freezer units
- Commercial Program 3
 - **Target Participants:** Commercial property owners
 - **Description:** Work with contractors to offer customized incentives to reduce energy use at peak times
 - **Sample Measures:** Smart thermostats, HVAC, LED lighting, controls, behavioral, heat pumps, duct sealing, appliances, VFDs, smart plugs



Residential

Programs that work with multifamily and single-family tenants and owners to assist with identifying energy efficiency opportunities and to install measures leading to utility bill savings and improved indoor air quality.

- Residential Program 1
 - **Target Participants:** Tenants, property owners/ managers
 - **Description:** Site assessments, customized technical assistance, and rebates to property owners. Kits and education to tenant (possible direct install)
 - **Sample Measures:** Individual and central HPWH, LED lighting/bulbs, HVAC heat pumps, smart thermostats, controls, duct sealing/insulation, pool pump VSD, showerheads, aerators, recirculation pumps, heat pump clothes dryers, induction stoves
- Residential Program 2
 - **Target Participants:** Homeowners, renters
 - **Description:** Provide guidance to identify energy programs and upgrades through participating contractors for homeowners; provide energy saving kits and education to renters (possible direct install measures)
 - **Sample Measures:** HPWH, smart power strips, HVAC heat pumps, shower heads, aerators, LED bulbs, attic insulation, induction stoves, recirculation pumps, HP clothes dryers

Public

Programs that assist public agencies throughout San Diego County identify and implement energy efficiency projects.

- Public Program 1
 - **Target Participants:** Public agencies (i.e., cities, County, educational agencies, special districts, tribal nations)
 - **Description:** Customized and unbiased hands-on expert guidance and support services from EE project identification to completion for public facilities and assets including access to funding and financing. Focuses on decarbonization measures. Agency-wide benchmarking and strategic energy resilience planning.
 - **Sample Measures:** Various EE measures (e.g., HVAC, HPWH, LED lighting, pipe insulation, window film, pumping, process optimization, RCx, controls, EMS upgrades) and high-level educational resources on DERs (e.g., solar and other distributed generation systems, battery storage, electric vehicles, demand response programs, solar hot water heating)
- Public Program 2
 - **Target Participants:** Tribal Nations
 - **Description:** A streamlined pathway for tribal nations in the San Diego region to receive customized technical assistance to identify, develop, and implement energy-related initiatives that address unique needs within tribal communities.



- **Sample Measures:** Overall stakeholder engagement and outreach; establish SDREN tribal collaborative efforts; customized program outreach; program design services

Codes & Standards

Programs that assist permitting authorities streamline the permitting process by offering customized technical assistance.

- Codes & Standards Program 1
 - **Target Participants:** Permitting authorities
 - **Description:** Policy and compliance support and enhancing communication and experience between permitting authorities and permit applicants
 - **Sample offerings:** Needs assessment; tools and templates; customized one-on-one support; educational workshops

Proposed Budget:

Upon CPUC approval, SDCP will be authorized to access public purpose funds to implement energy efficiency programs in San Diego. The CPUC awards budgets based on 4-year program portfolio filings and an 8-year business plan. Accordingly, Program Administrators (PAs) develop a budget for the entire business plan period and the initial 4-year program portfolio period. The total 8-year budget proposed by SD-REN is being finalized to cover 2024-2031. The proposed budget for the first 4-year cycle (2024-2027) will include an annual budget request ranging from \$25M-\$35M over that initial 4-year period.

Next Steps:

SDCP Staff will continue to develop the Business Plan Application and supporting documents. Staff will request approval of the final application from the SDCP Board of Directors at the December meeting, prior to CPUC submittal. Staff expects to submit the completed Business Plan Application to the CPUC in December 2023.

COMITTEE REVIEW

Staff presented SDREN draft programs and governance at the September 14, 2023, meeting of the Community Advisory Committee (CAC). Staff discussed SDREN draft programs, governance and budget with the CAC Programs Ad-Hoc Committee on September 6, 2023, and October 5, 2023.

FISCAL IMPACT

As stated above, were it to be approved by the CPUC, all SDREN activities are cost recoverable. SDCP staff time contributing to SDREN management is reimbursable by the CPUC.

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors

From: Jack Clark, Chief Operating Officer
Colin Santulli, Director of Programs
Nelson Lomeli, Program Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approval of San Diego Community Power's Net Billing Tariff

Date: October 26, 2023

RECOMMENDATION

Approve San Diego Community Power's (SDCP) Net Billing Tariff (NBT) for all new customers who install onsite generation on or after April 15, 2023, and existing customers transitioning out of the Net Energy Metering (NEM) Tariff following the conclusion and/or termination of their 20-year NEM legacy period.

BACKGROUND

In December 2022, the California Public Utilities Commission (CPUC) approved Decision 22-12-056, which adopted a successor tariff to NEM 2.0 called "Net Billing Tariff." The CPUC determined through its [NEM 2.0 Lookback Study](#) that the current NEM program was not meeting the objectives of Assembly Bill 327 to:

1. Ensure sustainable growth in the market for customer-sited renewable distributed generation; and
2. Ensure that the total benefits of the successor program to all customers (including nonparticipating customers) are approximately equal to the total costs.

The study showed that NEM 2.0 was creating a cost-shift of hundreds of millions of dollars per year to non-NEM customers. The CPUC started the development of the NEM successor tariff that would eventually become known as "NBT" to alleviate the cost-shift, promote affordability across all customers, incentivize the installation of battery storage systems, and support grid reliability.

The development of NBT began in November 2020. The CPUC received 18 proposals from multiple parties for the design and structure of the successor tariff. Opening and rebuttal testimonies, evidentiary hearings, and opening and reply briefs were submitted

throughout the summer of 2021. SDCP filed a Joint Reply Brief¹ alongside San Jose Clean Energy, recommending that the CPUC: 1) reject the Joint Investor-Owned Utilities proposal to use the Avoided Cost Calculator (ACC) for determining customer compensation, 2) reject the proposed high fixed charges, 3) adopt a reasonable glidepath for the industry, and 4) reject proposals to move NEM 1.0 and 2.0 customers to the successor tariff. In December 2021, the CPUC issued its Proposed Decision (PD) on the successor tariff. SDCP filed joint comments² alongside East Bay Community Energy in December 2021 arguing that “cumulative changes to the standard tariff from currently approved tariffs goes too far, too quickly” and “request that the Commission reject the grid participation charge, modify the export credit rate to provide long-term stability consistent with Sierra Club’s proposal, and make other modest changes to the PD prior to its approval.”

Due to the high number of comments and sharp disagreement among parties about the PD, the CPUC held the PD and issued a “Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis” in May 2022. The CPUC ultimately withdrew the December 2021 PD in November 2022. SDCP, in coalition with Redwood Coast Energy Authority, East Bay Community Energy, San Jose Clean Energy, and Peninsula Clean Energy Authority filed joint comments³ applauding the withdrawal of the original PD and requested that the CPUC revise the new PD to ensure a smooth transition, clarify use of Public Purpose Program Charges to fund the ACC Plus Adder, consider additional incentives for low-income customers, and allow commercial customers to receive adders. The CPUC issued a new PD in November 2022 which was revised in December 2022 and ultimately adopted by the CPUC to become NBT.

NBT cannot accurately be called “NEM 3.0” because it shifts away from the “net metering” structure entirely. Instead, it nets billing credits and charges instead of netting energy itself. Under NBT, all consumption of energy from the grid (i.e., “electricity imports”) is metered on a separate channel in real time and charged retail rates. All energy generated and exported to the grid (i.e., “electricity exports”) is metered on a separate channel in real time and billing credits are generated using the utilities’ ACC rates at each hour of the year.

The ACC provides an hourly estimate of the total grid benefits resulting from a customer’s load reduction. This includes the avoided costs of both capacity and energy, as well as the value of ancillary services, greenhouse gas emissions reductions, and avoided transmission and distribution infrastructure costs. The CPUC simplified the prices in the 8760 hours of the ACC into a single average monthly value for each hour of the day, differentiated between weekdays and weekends/holidays. The ACC values are intended to incentivize adoption of solar paired with battery storage by providing price signals to

¹ https://sdcommunitypower.org/wp-content/uploads/2022/09/Joint-Reply-Brief-of-SJCE-and-SDCP_9.14.21.pdf

² https://sdcommunitypower.org/wp-content/uploads/2022/09/R2008020-Joint-CCA-Comments-on-PD_Filed_1.7.22.pdf

³ <https://sdcommunitypower.org/wp-content/uploads/2022/12/R.20-08-020-Opening-Comments-of-Joint-CCAs-on-the-NEM-Revised-PD.pdf>

customers to export energy to the grid when energy is most valuable and needed to relieve grid stress.

All NBT customers must take service under a highly differentiated Time-of-Use (TOU) rate schedule. For the San Diego Gas & Electric (SDG&E) territory, the CPUC directed that rate schedule to be TOU-EV-5 since it has significantly different rates for on-peak and off-peak periods. Additionally, all customers must switch to monthly billing, instead of annually, and must pay the amount owed each month. The CPUC allowed the utilities to establish a successor rate schedule through a Tier 2 advice letter, a general rate case Phase 2, or a rate design window. SDCP will monitor the establishment of a successor rate schedule and may consider bringing back its own version for approval by the Board.

Recognizing the shift to decarbonization and electrification of buildings, the CPUC allowed for customers to oversize their generation systems by up to 50% more than historical loads. Customers, however, need to attest that their energy consumption will increase within 12 months.

Per the CPUC decision, SDG&E started placing new solar customers on its NBT rate schedule on April 15, 2023. SDG&E is required to implement a NBT billing system by mid-December 2023. Until the NBT billing system is operational, SDG&E will bill NBT customers under the NEM 2.0 Tariff.

DISCUSSION

Over the last several months, SDCP staff conducted significant analysis to broadly evaluate how SDCP compensates customers for the onsite generation of energy. The analysis included 1) considerations to adopt a payment structure for new onsite generation customers that aligns compensation with the needs of the grid (i.e., NBT), 2) potential programs designed to incentivize the pairing of storage with new onsite installations to support grid resilience, and 3) enhancements to the current SDCP NEM policy to improve compensation mechanisms and remove Net Surplus Compensation (NSC) caps. Comprehensively, this package of recommended actions would result in the most customer-centric, progressive onsite generation compensation strategy in California. The strategy carefully balances multiple priorities including supporting the local San Diego solar and storage industry, increasing access to distributed energy resources to Communities of Concern and low-income customers, an increasing statewide focus on grid resilience, customer fairness, and financial prudence for the agency.

This agenda item is focused on the consideration to adopt NBT recommendations for compensation for new onsite generation customers.

ANALYSIS

Current and Potential Future Onsite Generation Customer Overview

SDCP currently has over 152,000 accounts enrolled in its NEM tariff, with 98% of those accounts being residential customers, and approximately 12% being customers enrolled

in the California Alternative Rates for Energy (CARE) program and Family Electric Rate Assistance (FERA).

The following tables show the breakdown of accounts currently enrolled in the SDCP NEM Tariff by customer type (i.e., Commercial, Residential CARE/FERA, and Residential Non-CARE/FERA) and the percentage of accounts by customer type per SDCP member agency.

Table 1: Number of Accounts Currently Enrolled in SDCP NEM Tariff

Residential CARE/FERA	Residential Non-CARE/FERA	Commercial	Total
18,616	130,761	2,796	152,173
12%	86%	2%	100%

Totals may not add up to 100% due to rounding.

Table 2: Percent of Accounts Enrolled in SDCP's NEM Tariff by Customer Type by Member Agency

Member Agency	Commercial	Residential CARE/FERA	Residential Non-CARE/FERA
City of Chula Vista	1%	16%	83%
City of Encinitas	1%	2%	96%
City of Imperial Beach	3%	19%	78%
City of La Mesa	2%	8%	90%
City of National City	5%	46%	49%
City of San Diego	2%	12%	86%
County of San Diego	2%	12%	86%

Totals may not add up to 100% due to rounding.

Importantly, if NBT is adopted, these NEM customers **would not** be affected by NBT until they complete or terminate their 20-year NEM legacy period, at which point they would transition to the new tariff. Existing customers with onsite generation would remain on the SDCP NEM tariff for their generation charges and credits and on their SDG&E NEM tariff for delivery charges and credits during that period. Their NEM legacy period starts on the date they interconnected and received permission to operate.

SDCP expects 252 of these existing onsite generation NEM accounts to complete their NEM 1.0 legacy period in 2024 and switch to NBT, representing 0.2% of customers. The annual number of customers completing their NEM 1.0 legacy period is approximately fewer than 500 customers per year until 2029.

Staff needed to estimate the potential number of customers who would be served by future rates to calculate potential financial impacts of various NEM and NBT scenarios. A key input to that analysis is expected future rooftop solar adoption, the primary source of

onsite generation by SDCP customers. SDCP forecasted the following scenarios of solar growth over the next three years:

1. **Low Growth:** Assumes an adoption rate that is based on the average number of new NBT-specific setups seen in SDCP's service territory during the months of May-July 2023. May 2023 was the first full month that any new SDG&E solar interconnections were placed on NBT. This scenario assumes a dramatic decrease in the number of installations from the historical trajectory.
2. **Mid Growth:** Assumes a contraction in the number of historical installations by 40% in the residential market based on estimates from the Solar Energy Industries Association.⁴
3. **High Growth:** Assumes business as usual with no change in the number of installations and is based on the average number of installations per month in SDCP service territory seen in 2021, before the rush in 2022.

Based on these assumptions, the forecast shows that SDCP could see 2,000 new NBT customers in the Low Growth scenario, 30,000 in the Mid Growth scenario, or over 50,000 new NBT customers in the High Growth scenario. This includes customers who are ending their 20-year legacy NEM period and transitioning to NBT. Staff determined that the Mid Growth scenario is more likely to occur due to historic investments under the Inflation Reduction Act, a decline in rooftop solar prices, and an increasing number of incentives available for energy storage to be paired with solar systems.

Program Options

Using the Mid Growth scenario for future expected onsite generation customers, staff conducted an in-depth impact analysis of two potential policy options:

1. Extend the current NEM 2.0 Tariff to all new customers; or
2. Implement an NBT.

Option 1: Extending NEM 2.0 for All New Customers

The first option examined the possibility of keeping the current NEM 2.0 tariff for all new self-generation customers. Several factors led staff to not recommend this option.

Since SDCP represents only a portion of the total bill, new customers would still be subject to SDG&E's NBT (now called "Solar Billing Plan") for transmission and distribution costs. Since generation rates represent 35%-45% of the total bill, extending NEM 2.0 would have a minimal impact on the billing changes imposed by NBT.

Moreover, having two different structures could cause significant customer confusion, cause potential billing issues, and further complicate estimates on the value of rooftop

⁴ [Solar Industry Research Data | SEIA https://www.seia.org/solar-industry-research-data](https://www.seia.org/solar-industry-research-data)

solar for customers including system payback periods. As required by the CPUC's NBT decision, all new NBT customers would still be required to take service under TOU-EV-5, regardless of SDCP's NEM tariff.

Staff also analyzed the financial impact of extending the current NEM 2.0 Tariff. The analysis revealed that under the Mid Growth scenario, extending the current NEM Tariff to all new customers would result in costs to SDCP amounting to approximately \$32 million over three years. All SDCP customers would have to bear these costs through rates while the benefits would be targeted to a limited number of customers. Additionally, staff believes that this investment fails to send the proper pricing signals to promote energy storage adoption and does not contribute to grid reliability.

Option 2: Adopt a Net Billing Tariff for All New Customers

The second option analyzed was the adoption of an NBT for all new customers. This is the staff recommendation based on the results of the analysis outlined below.

An initial step to analyze the adoption of NBT was to consider the appropriateness of using the SDG&E ACC rates for a potential SDCP NBT. To determine if the load curve and ACC rates for SDG&E could be used as a proxy for SDCP, SDCP and its consultant, Pacific Energy Advisors (PEA), analyzed the CPUC's 2022 Distributed Energy Resources ACC Documentation conducted by Energy and Environmental Economics, Inc. (E3). The SDCP and PEA teams determined that the work done by E3 for the CPUC was thorough and adequate, and that SDG&E's ACC rates for generation sufficiently reflect SDCP's load curve. Accordingly, the analysis of adopting NBT was done assuming the usage of SDG&E's ACC rates for SDCP's NBT.

By design, the ACC provides customer compensation for exported energy from onsite energy systems that is more aligned with wholesale energy prices and thus incentivizes energy storage. These price signals align with grid conditions and needs, especially during the peak periods in the summer months of August and September. As such, adopting NBT (including the ACC) is aligned with SDCP's commitment of supporting grid reliability and encouraging energy storage adoption. Additionally, adopting NBT would align with the direction that the majority of Load Serving Entities (LSEs) are moving in, including fellow CCAs. Clean Power Alliance, the largest CCA in the state, adopted NBT for all new customers in July 2023, and the majority of CCAs in Pacific Gas & Electric (PG&E) territory are bringing NBT to their Board of Directors for consideration in the next couple of months. Additionally, aligning the generation and distribution components under a NBT structure would significantly reduce customer confusion and billing issues, and provide further clarity to the solar industry and thus allowing them to model estimates more effectively.

Staff analyzed the financial impacts of adopting NBT for all new customers. The analysis showed that under the Mid Growth scenario, adopting NBT would result in costs to SDCP amounting to approximately \$8.5 million over three years. This represents a savings of approximately \$23 million for all SDCP rate payers compared to extending the current NEM 2.0 tariff. This is due to the lower ACC rates paid for generation. These savings could be returned to all customers via rate savings and/or

reinvested back into the community via programs, such as developing an incentive program to encourage pairing battery energy storage systems with new solar installations.

Recommendations

With the conclusion of this analysis, staff is bringing three recommendations to the Board of Directors (“Board”) that relate to future onsite generation customers:

Adopt NBT for All New Customers

Based on the analysis described above and the associated savings for all ratepayers, staff will recommend to the Board adoption of a SDCP NBT that mirrors the CPUC NBT decision and is in line with portions of SDG&E’s proposed NBT. NBT would give SDCP the opportunity to meet the needs of all customers more equitably, while helping to reduce costs for all customers. This enables SDCP to leverage the savings and provide programs that encourage clean energy use and energy storage adoption with a particular focus on low-income customers that are currently underrepresented in NEM participation.

Adopting NBT would mean that new NBT customers would:

1. Have all electricity exports separately metered on a different channel than all electricity imports;
2. Be compensated based on the ACC rates;
3. All electricity imports would be charged retail rates; and
4. Be billed monthly for net charges.

Per the CPUC Decision 22-12-056, the legacy period for NBT customers is set at 9 years and is linked to the customer that originally causes the system to be installed, not to the system or premise. SDCP’s tariff aligns with this legacy period.

The adoption of NBT will not affect existing NEM customers until the completion and/or termination of their 20-year NEM legacy period. Per the CPUC

Provide Generation Adders for New NBT Customers

To accompany the adoption of NBT, staff will recommend to the Board including additional generation incentives or “adders” in the tariff in the form of compensation per generated kilowatt hour to be added to the ACC. Similar adders were established by the CPUC for some investor-owned utilities (IOUs) as part of NBT. The adder amounts (i.e., \$/kWh) were selected to achieve a simple payback period of nine years for solar systems. The CPUC determined the nine-year payback period was reasonable and would allow the market to grow sustainably.

The CPUC adopted a generation adder for residential customers to achieve the nine-year payback period for two IOUs: PG&E and Southern California Edison (SCE). This adder is higher for customers participating in the CARE/FERA programs due to their

lower monthly bills. In its decision, the CPUC determined that in SDG&E territory, the simple payback period for solar systems was already below the nine-year target, in large part due to the relatively higher rates in SDG&E territory. Accordingly, no adder was included for SDG&E customers in the CPUC decision. The table below shows the adders and associated simple payback periods by IOU as determined by the decision:

Table 3: CPUC Adopted Initial ACC Plus Adders by Utility (\$/kWh)

Customer Segment	SDG&E	PG&E	SCE
Residential Non-CARE	\$0.000	\$0.022	\$0.040
Residential CARE	\$0.000	\$0.090	\$0.093
Commercial (not eligible)	\$0.000	\$0.000	\$0.000

Table 4: CPUC Simple Payback Periods for SDG&E Net Billing Customers Stand-alone Solar Payback Period (years)

Customer Segment	SDG&E	PG&E	SCE
Residential Non-CARE	5.95	9.00	9.00
Residential CARE	8.43	9.00	9.00
Commercial (not eligible)	7.50	8.17	9.38

To further support the growth of regional solar adoption, staff analyzed the possibility of providing generation adders that achieve the following goals:

- Enhance the competitiveness of SDCP's onsite generation compensation policy and clarify the value of SDCP to customers;
- Close the generation bill credit gap and reduce the payback period to make adoption more financially attractive for customers;
- Ensure simplicity and ease of understanding of the adder;
- Address and promote equity for CARE and/or FERA customers; and

- Support grid reliability.

In the [Community Power Plan](#), SDCP committed to support populations historically underrepresented in energy program participation by centering communities of concern in program design to enable participation by all customers, in addition to directing more investments to communities of concern. Low-income customers are underrepresented in NEM participation; CARE/FERA customers make up 24% of all customers but account for only 12% of all NEM customers. This disparity was a key motivator for identifying an adder that would provide additional financial support to income-qualified customers to lessen the financial burden of adopting onsite generation, such as rooftop solar.

With these goals in mind, staff used the CPUC's customer bill model⁵ employed during the adoption of NBT and analyzed the impact to the payback period the adder has on non-CARE/FERA customers and used it to determine the adder amount needed for CARE/FERA customers to achieve an equal simple payback period for stand-alone solar.

Staff will recommend to the Board that SDCP provide the generation adders outlined in Table 5 below to all customers, including residential non-CARE/FERA, residential CARE/FERA, and non-residential (commercial) customers. Staff will propose to the Board that all new non-CARE/FERA customers, both residential and non-residential, receive a generation adder of \$0.0075/kWh for six years. This adder aligns with the premium for SDCP's Power100 service because customers are exporting 100% renewable energy. Additionally, staff proposes an adder for residential CARE/FERA customers of \$0.11/kWh for six years.

Table 5: Proposed Generation Adders

Customer Class	Residential (Non-CARE/FERA)	Residential CARE/FERA	Commercial
Adder Amount	\$0.0075/kWh	\$0.11/kWh	\$0.0075/kWh

Staff determined that the proposed adder amounts would result in a payback period for stand-alone solar of approximately six years, including CARE/FERA customers, which is similar to the average simple payback period for NEM 2.0 customers.⁶ This aligned with the recommendations from GRID Alternatives to ensure that the tariff benefits income-qualified households with higher adders and shorter payback periods.

⁵ Net Billing Tariff (ca.gov) <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/customer-generation/nem-revisit/net-billing-tariff>

⁶ NEM 3.0 – Making the Financial Case by Combining Home Electrification with Energy Storage - Schneider Electric Solar America <https://solar.se.com/us/en/2023/08/22/nem-3-0-making-the-financial-case-by-combining-home-electrification-with-energy-storage/#:~:text=Now%2C%20let's%20look%20at%20some,to%20recover%20the%20initial%20investment>

Table 6: Simple Payback Periods for SDCP Net Billing Customers with Generation Adders (years)

Customer Class	Residential (Non-CARE/FERA)	Residential CARE/FERA	Commercial
Stand-alone Solar Payback Period (years)	5.83	5.91	7.33

Staff will recommend to the Board that these adders be offered to all new NBT customers that started service on or after April 15, 2023, and be offered for three years, ending on December 31, 2026. After three years, but prior to the sunset of the adder, staff would assess the general market conditions for solar and storage and evaluate the effectiveness of the adders in helping:

- Reduce the simple payback period for CARE/FERA customers;
- Drive adoption of solar among CARE/FERA customers; and
- Sustain the region's rooftop solar market.

Staff would come back to the CAC and Board in 2026 with recommended adjustments or updates.

Additionally, staff is evaluating the feasibility of providing an energy storage grid interactive adder that will allow SDCP to utilize the batteries for grid reliability support. Staff will bring back an update on this adder to the Board in early 2024.

NBT Annual Net Surplus Compensation Approach

To accompany the adoption of NBT, staff will recommend to the Board a standard approach to the Net Surplus Compensation (NSC), similar to the NSC approach for NEM customers. Under the standard NSC payment procedure, the total amount of electricity export and electricity import volumes are netted to determine a net annual electricity export amount in kWh wherever applicable. This amount is then compensated based on the NSC rate for the month the customer has their true-up. Customers are eligible to receive a check if their NSC amount is \$100 or more; otherwise, the amount is carried over to the next billing cycle to offset future charges.

In the CPUC decision, utilities contend that customers may receive a double payment for the same the exports — one payment at ACC rates and another at NSC rates, which is effectively the ACC rate for the entire month. The CPUC acknowledges this potential and directed the utilities to implement the following adjustment:

1. Calculate if a customer is a net exporter of electricity over the past 12 months;
2. Calculate the average of the ACC rate of all NBT customers in the service territory for the past 12 billing cycles;
3. Calculate a NSC adjustment amount by multiplying the average ACC by the annual net electricity exported; and

4. Debit the NSC adjustment from the total NSC payment amount.

Staff holds a different, more customer-centric perspective than the CPUC and considers the true-up process as a demarcation between the billing credits using the ACC and the compensation of net electricity exported. For this reason, staff will recommend to the Board that SDCP should not adopt a NSC adjustment process and instead should maintain the standard process for NSC. This would further differentiate our tariff from the utility and provide a better customer experience in alignment with keeping our customers as the cornerstone of everything that we do and in concert with our strategic goal to strongly source and promote local renewable power.

Recommendation Summary

In summary, staff will recommend to the Board that they adopt the Net Billing Tariff in Attachment A, with the following key features:

- All electricity exports, as metered on a separate channel in real time, will be valued using the same methodology as SDG&E bundled customers.
- All electricity exports, as metered on a separate channel in real time, will be compensated using the same hourly ACC rates as SDG&E bundled customers.
- All electricity imports, as metered on a separate channel in real time, will be charged using SDCP's generation rates as stipulated in the EV-TOU-5 rate schedule or a successor rate schedule for residential customers.
- All electricity exports, as metered on a separate channel in real time, for all customers will receive a flat generation adder of \$0.0075/kWh for six years. The flat generation adder will be \$0.11/kWh for six years for customers enrolled in the CARE or FERA programs.
- The generation adders will be offered for all new customers that interconnect and receive permission to operate on or after April 15, 2023, through December 31, 2026.
 - Staff will evaluate the effectiveness of the adders in 2026 and return to the Board with any updates or adjustments.
- NBT customers will continue to receive NSC for total net energy exports over the course of an applicable relevant period with no NSC adjustment and be subject to SDCP's standard terms and conditions of NSC payment.
- Customers currently served under SDCP's NEM Tariff will not be affected by the NBT Tariff for the duration of their 20-year NEM legacy period.
 - Once their legacy period concludes or is terminated, they will be placed into NBT and will not be eligible for the generation adders.
- The NBT will be applicable to customers who begin service on SDG&E's NBT schedule on or after April 15, 2023.

- Until SDG&E and SDCP NBT billing systems are fully operational, customers who began service on SDG&E's NBT schedule after April 15, 2023 are currently being billed under the SDCP NEM Tariff but are not eligible for the 20-year legacy period. These NBT transitional customers will be switched to billing under the SDCP and SDG&E NBT in December 2023 or the date that SDG&E specifies the transition will occur.

Stakeholder Engagement

Staff presented the recommended proposal, or earlier iterations of the proposal, to various local and statewide stakeholders. When possible, and deemed in the best interest of SDCP customers, adjustments were made to the proposal based on stakeholder feedback. Several of the stakeholders were involved in the 2021 and 2022 NEM CPUC proceeding and Staff reviewed and incorporated, when feasible, stakeholder recommendations included in comments to the CPUC.

Stakeholder engagement was conducted with a variety of stakeholders including:

- SDCP Board of Directors
- SDCP Community Advisory Committee Members
- Local elected officials
- California Solar & Storage Association
- Climate Action Campaign
- GRID Alternatives
- International Brotherhood of Electrical Workers 569
- Local chambers of commerce and economic development corporations
- Other Community Choice Aggregators
- Sierra Club San Diego chapter
- Staff of local public agencies
- Utility Consumers' Action Network
- Vote Solar
- Baker Electric
- Cleantech San Diego Energy Working Group

NEXT STEPS

SDG&E is anticipated to implement their updated billing systems and switch customers by December 15, 2023. If the Board adopts the staff recommendations, staff will work with Calpine Energy Solutions to implement the tariff for new onsite generation customers and NBT customers currently being served on NEM 2.0 on an interim basis. Staff will work with Calpine and SDG&E to ensure proper testing and validation of data communications and billing mechanics following adoption. Additionally, Staff will work to create a new webpage on the SDCP website with information on NBT.

Additionally, SDCP recently added a new staff member to focus solely on the development of a future battery storage incentive program. Over the coming months, staff will conduct an extensive review of battery storage incentive program best practices from

throughout the country. Concurrently, staff will engage with the industry through informal interviews and workshops to incorporate industry feedback into program design. Staff will come back to the CAC and the Board in the first quarter of calendar year 2024 with an update on program development.

COMMITTEE REVIEW

The Community Advisory Committee (“CAC”) received an update on Staff’s proposed recommendations at their regularly scheduled October 12, 2023, meeting. The CAC had questions regarding the transition of customers onto NBT, whether current NEM customers would be impacted by this tariff, whether generation systems could be oversized, and the legacy period for NBT customers. The CAC encouraged Staff to conduct outreach and communication to educate stakeholders on the changes and proposed adders. The CAC was very interested in the battery storage pilot program and looks forward to engaging on the subject in upcoming meetings. The CAC applauded Staff for the detailed analysis that was undertaken, the collaboration between departments, and the balanced approach, while centering the customer, in the design of the tariff.

The Finance and Risk Management Committee (“FRMC”) received a report on this item at their regularly scheduled October 19, 2023 meeting. The FRMC voted unanimously to recommend Board approval of the tariff.

FISCAL IMPACT

SDCP estimates that adopting NBT would result in bill credit costs amounting to approximately \$8.5 million over three years. This represents a significant savings of approximately \$23.5 million over three years compared to extending the SDCP NEM tariff.

SDCP estimates that providing generation adders to all customers would result in a cost of \$2.8 million over three years. This cost would be covered by the savings resulting from the adoption of NBT, reducing the savings to approximately \$20.7 million over three years.

SDCP estimates that NSC payments would result in a cost of approximately \$3.2 million over three years. This cost remains consistent regardless of whether NBT is adopted and is factored into SDCP’s annual operating budget.

Staff does not yet have an estimate of a potential battery energy storage pilot program. Staff will bring back an item to the Board in early 2024 to discuss a potential program offering and include budget estimates. Staff may be able to use the savings from adopting NBT for the battery program.

ATTACHMENTS

Attachment A: San Diego Community Power Net Billing Tariff



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San Diego Community Power Net Billing Tariff

APPLICABILITY: San Diego Community Power (“SDCP”) Net Billing Tariff (“NBT” or “NBT Tariff”) shall be effective beginning on April 15, 2023, the day following the NEM-Successor Tariff (“NEM-ST”) eligibility sunset required by the California Public Utilities Commission (“CPUC”).

NBT Tariff shall apply to

- (i) SDCP customers served under San Diego Gas & Electric Company (“SDG&E”) Solar Billing Plan (“SBP”) and/or Schedule NBT for Customer-Sited Renewable Distributed Generation¹ (“SDG&E Schedule NBT”) receiving electric generation services from SDCP, including customers with battery storage, fuel cells, or as approved by the CPUC under future aggregated or virtual designs,
- (ii) SDCP customers who are eligible for SDG&E’s NEM Tariff and elect to switch to the SDCP NBT Tariff, and
- (iii) SDCP customers who are automatically transitioned to the SDCP NBT following the conclusion and/or termination of their 20-year SDG&E Net Energy Metering (NEM) legacy period.²

SDG&E tariffs are available on SDG&E’s website³ and may be amended or replaced by SDG&E from time to time.

This tariff shall remain in effect until modified, amended, or replaced by SDCP’s Board of Directors (“Board”) at a duly noticed public meeting of the Board.⁴

ELIGIBILITY: SDCP’s NBT Tariff is available to customers operating a solar, wind, biomass, geothermal, or other renewable resource as defined in the California Energy Commission’s (“CEC”) Renewables Portfolio Standard (“RPS”) Eligibility Guidebook.⁵ Renewable Energy Generation Facilities (“REGF”) are limited to 1MW under the SDCP and SDG&E NBT tariffs. Additionally, the customer must participate in SDG&E’s SBP (or successor) for non-generation

¹ SDG&E’s proposed Schedule NBT was submitted to the California Public Utilities Commission in Advice Letter 4155-E and 4155-E-A, available at <https://www.sdge.com/rates-and-regulations/tariff-information/advice-letters>

² See SDG&E’s Schedule NEM and Schedule NEM-ST at <https://www.sdge.com/rates-and-regulations/current-and-effective-tariffs> for details on SDG&E’s NEM legacy periods.

³ [Current and Effective Tariffs | San Diego Gas & Electric \(sdge.com\)](https://www.sdge.com/rates-and-regulations/current-and-effective-tariffs) <https://www.sdge.com/rates-and-regulations/current-and-effective-tariffs>

⁴ Board agendas are available at: <https://sdcommunitypower.org/resources/meeting-notes>.

⁵ The latest RPF Eligibility Guidebook can be found at the CEC’s website: <https://www.energy.ca.gov/programs-and-topics/programs/renewables-portfolio-standard>.

Effective Date

Originally Approved: *Insert
Date*



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services, such as transmission and distribution. SDCP customers served under SDCP's NBT Tariff must provide SDG&E with a completed SDG&E NBT or SDG&E NEM Application and comply with all other SDG&E requirements for enrollment in the SDG&E ⁶(~~6000~~) before becoming eligible for the SDCP NBT Program. No direct agreement with SDCP is necessary.

Eligible SDCP customers who begin service under the SDG&E NBT Schedule on or after April 15, 2023, are automatically enrolled in the SDCP NBT Tariff either at the time of initially enrolling with SDCP or at the time SDG&E begins serving them on the SDG&E NBT Schedule. Eligible SDCP customers who begin service under the SDG&E NEM tariff prior to April 15, 2023, will be eligible for service under the SDCP NEM Tariff⁷ for 20 years following their SDG&E Original PTO.

Customers served under the SDCP NEM Tariff may elect to switch to the SDCP NBT Tariff. Customers who voluntarily switch to the SDCP NBT Tariff or who are automatically transitioned to the SDCP NBT Tariff following the conclusion and/or termination of their NEM legacy period are **not** eligible to return to service under the SDCP NEM Tariff.

This tariff does not apply to customer-generators with multiple meters who wish to aggregate the electrical load of the meters located on the customer's owned, leased, or rented property where the Renewable Electrical Generation Facility is located, including existing Net Energy Metering Aggregation or Virtual Net Energy Metering tariffs.

NBT TRANSITION CUSTOMERS: Customers who submit complete applications to SDG&E on or after April 15, 2023 will interconnect under SDG&E's Schedule NBT but will be temporarily billed on NEM-ST until SDG&E Schedule NBT is fully operationalized in SDG&E's and SDCP's billing systems, respectively. Once SDG&E Schedule NBT is operationalized, any customers who interconnected under SDG&E Schedule NBT but were billed temporarily on NEM-ST will complete their true up under their temporary NEM service and transition to billing on the SDG&E Schedule NBT at the beginning of their next available billing cycle, currently expected as of December 2023. The NEM-ST 20-year legacy period is not applicable to SDG&E Schedule NBT customers taking interim service on NEM-ST.

LEGACY PERIOD: The terms of the NBT Tariff shall remain effective for a period of up to 9 years from the Permission to Operate Notice ("PTO")⁸ Date from SDG&E. Per CPUC Decision 22-12-056, the legacy period is linked to the customer that originally causes the system to be installed, not to the system or premise. Should another customer take control of (*e.g., buys, leases, or pays*

⁶ See <https://www.sdge.com/solar/solar-billing-plan> for more information.

⁷ SDCP's NEM Schedule is available at: <https://sdcommunitypower.org/key-documents/>.

⁸ Permission to Operate Notice (PTO) is SDG&E's written approval authorizing a customer to commence operation of a qualifying renewable electrical generating facility or approving customer's proposed modifications of the generating facility. The date that SDG&E provides the customer with the original PTO is referred to as the Original PTO Date. See SDG&E Schedule NBT for additional information.



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a power purchase agreement for) the system (such as a new customer moves into the premise), the subsequent customer does not have a legacy period. Exceptions are made for:

- The subsequent customer is or was the legal partner (e.g., spouse or domestic partner in the case of residential customers or, in the case of nonresidential customers, the account-holding entity continues to be majority controlled by the same underlying individuals or entities from the time the legacy system was installed) of the original customer. For this latter group, the legacy period maintains its original interconnection date and length of nine years.
- When a builder/contractor constructs a new building and receives PTO before selling the unit. The new owner after the rebuild will be able to retain the 9-year legacy period.

RATES: All rates for the SDCP NBT Tariff are in accordance with the applicable customer's otherwise applicable SDCP rate schedule ("SDCP OAS").⁹ SDCP NBT residential customers are required to enroll on highly differentiated time-of-use rates currently defined as EV-TOU-5 in SDCP and SDG&E territory, or other qualified rates that SDG&E and SDCP may develop in the future, and may choose to enroll in critical peak pricing or peak day pricing rates wherever applicable. The SDCP NBT Tariff provides the mechanism for billing and crediting customers with generating facilities only. Customers served under this tariff are still responsible for all billed usage charges according to their applicable SDCP rate schedule, including volumetric usage, demand charges (if applicable), Power100 surcharges (if applicable), taxes, and all other charges owed to SDCP. Nothing in this tariff will supersede any SDG&E or SDCP authorized charges.

CHARGES, CREDITS AND BILLING: SDCP's generation charges and credits for electricity (measured in kilowatt-hours, or "kWh") are calculated as described below.

A) Definitions:

- i. "Imported Electricity" is defined as when a customer uses any metered electricity supplied by SDCP, reflected as "positive" kWh usage, as recorded on the import channel of the customer's SDG&E meter.
- ii. "Imported Charges" is defined as the charges associated with the amount of Imported Electricity during a billing cycle within the Relevant Period based on the customer's OAS.
- iii. "Energy True Up" is defined as the process performed by SDG&E for the transmission and delivery service and by SDCP for the generation service, as applicable, at the end of each Relevant Period following the date the customer-generator was first eligible for schedule

⁹ SDCP's residential rates can be found at <https://sdcommunitypower.org/billing-rates/residential-rates> and non-residential rates at <https://sdcommunitypower.org/billing-rates/commercial-rates>.



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NBT, or the date of SDG&E's written approval to begin parallel operation of the REGF for purposes of participating in Schedule NBT, whichever is later, and at each anniversary date thereafter.

- iv. "Exported Electricity" is defined as when a customer supplies any metered electricity to the electric grid, reflected as "negative" kWh usage, as recorded on the export channel of the customer's SDG&E meter.
- v. "Export Compensation Rate," at times referred to as the Generation Electricity Export Credits ("EEC")¹⁰, is defined as the rate or amount at which Exported Electricity will be compensated per kWh. The Export Compensation Rate is based on the CPUC's most recent Avoided Cost Calculator ("ACC"), adopted as of January 1 of the calendar year of the customer's interconnection date. The Generation EEC is based on hourly ACC values, averaged across days in a month for each hour, differentiated by weekdays and weekends/holidays. SDCP utilizes SDG&E's Generation EEC calculated based on a weighted average of ACC values across its four different climate zones. EEC does not vary between customer classes or technology. The Generation EEC Price is posted on SDG&E's & SDCP's websites.
- vi. "Export Credits" are defined as the appropriate credit for any Exported Electricity, based on the Export Compensation Rate multiplied by the amount of Exported Electricity, and any applicable credit surcharges.
- vii. "Export Credit Balance" is defined as when a customer has excess export credits carried into the subsequent billing period, or into the SDCP true up process at the end of the relevant period.
- viii. "Net Surplus Electricity" is defined as the kWh amount of excess electricity exported to the grid after netting Electricity Imports and Electricity Exports at end of the Relevant Period.
- ix. "Relevant Period" is defined as the billing period that consists of twelve-monthly billing cycles commencing on the date SDG&E provides Customer-Generator with SDG&E's written approval to begin parallel operation of the REGF PTO for purposes of participating in NBT, and on every subsequent anniversary thereof.

¹⁰The EEC Price is a \$/kWh value which represents the estimated value of exports to the grid. Each year, the EEC Price is calculated using the California Public Utilities Commission (CPUC) Avoided Cost Calculator (ACC) approved to be effective as of January 1 of the calculation year (the "vintage year"). For each "vintage year", the EEC Price is calculated for each month of a 9-year horizon period, and it is differentiated by hour (24 hours) and by weekdays and weekend/holidays. In addition, each hourly EEC Price is broken down in two components: (1) the Generation EEC Price (energy, cap and trade and generation capacity) component, and (2) the Delivery Service EEC Price (transmission, distribution, greenhouse adder and methane leakage) component. The current version of the ACC is available at <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/idsm>.



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B) Generation Electricity Charges:

As determined in each billing period, Generation Electricity Charges are calculated by multiplying the customer's Imported Electricity (i.e., electricity consumption from the grid) in kWh by the applicable electricity (commodity) rate components (\$/kWh) in the customer's applicable SDCP OAS.

C) Export Credits:

As determined in each billing period, Export Credits are calculated by multiplying the hourly-differentiated customer's Exported Electricity (i.e., electricity generated and sent to the grid) in kWh by the Export Compensation Rate.¹¹ The calculated value of such net electricity exports shall be credited to the customer and applied as described in Sections (C) and (F), below.

Export Credits are calculated monthly and can be used to offset volumetric (kWh) Generation Electricity Charges (as calculated above) incurred during the billing period but at no point can they offset demand charges, taxes, or other charges or fees within the Customer's SDCP OAS, nor will they offset any SDG&E transmission and delivery charges. Any unused Generation Electricity Export Credits accrued in a given month can be used to offset volumetric (kWh) Generation Electricity Charges within the customer's Relevant Period as described in Section (E). Customers on SDCP NBT will be billed based on no netting of kWh imports (consumption) and kWh exports (excess generation placed on the grid). Generation charges owed to SDCP net of any eligible credits will be paid each month and all charges and credits will be trued up at the end of the Relevant Period.

For the first five years of this NBT Tariff ("lock-in period"), the Export Compensation Rate will be set annually using a 9-year schedule from the ACC. All customers who interconnect during this five year "lock-in period" will receive a nine-year schedule of Generation ECC set in the year of interconnection as long as the SDG&E Interconnection Agreement remains valid and under the name of the original customer (or an "eligible customer-generator" as defined in SDG&E's Schedule NBT). During the "lock-in period", these customers will have the Export Compensation Rate derived from the ACC adopted by the CPUC to be in effect as of January 1 of the calendar year of the customer's Original PTO Date. A new customer moving into a dwelling with an existing generating facility served under SDG&E's Schedule NBT will not be eligible to retain the Export Compensation Rate associated with the Original PTO Date of the generating facility, with two exceptions as described in SDG&E's Schedule NBT.

Customers may opt out of their nine-year schedule of Generation EEC and receive an

¹¹ See <https://sdcommunitypower.org/programs/net-billing-tariff>.



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Export Compensation Rate that is updated annually based on the most recently adopted ACC. Customers that interconnect during the five-year lock-in period may exit their respective nine-year schedule of Generation EEC, but will not be able to opt back in. Following the five-year lock-in period, Generation EEC for new NBT customers will be updated annually on January 1 based on the ACC adopted as of January 1 of that year. Generation EEC will be accrued separately for Delivery under SDG&E and Generation under SDCP.

D) SDCP Generation Adders:

All new NBT customers are eligible to receive an SDCP Generation Adder. Customers that subsequently transfer into this NBT Tariff after the conclusion and/or termination of their 20-year NEM legacy period are not eligible for the SDCP Generation Adder.

The credit is calculated monthly by multiplying the Exported Electricity by the applicable \$/kWh Generation Adder Rate shown in Table 1.

Table 1: Generation Adder Rates

Residential Non-CARE	Residential CARE	Non-Residential
\$0.0075/kWh	\$0.11/kWh	\$0.0075/kWh

i. Eligibility:

- To be eligible for the SDCP “Residential Non-CARE” and “Non-Residential” Generation Adder, customers need to (a) be served on this tariff, and (b) have an NBT effective date between April 15, 2023 and December 31, 2026.
- To be eligible for the SDCP “Residential CARE” Generation Adder, customers need to (a) be served on this tariff, (b) have an NBT effective date between April 15, 2023 and December 31, 2026, and (c) be enrolled in either the CARE or FERA programs as of the effective date.
- A new customer moving into a dwelling with an existing Generating Facility served under this tariff on or after January 1, 2027 will not be eligible for the SDCP Generation Adder.

ii. Adder Period:

- The SDCP Generation Adder Rates, as defined above, will be fixed during the first six (6) years (the “Adder Period”) beginning on the NBT effective date communicated by SDG&E to SDCP. Residential customers will



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receive the SDCP Generation Adder during their Adder Period, as long as the SDG&E Interconnection Agreement remains valid and under the name of the original customer.

- b. Customers receiving the Residential CARE adder will need to maintain enrollment in either the CARE or FERA programs for the duration of the Adder Period.
 - i. If a customer account ceases to be enrolled in either the CARE or FERA programs (as communicated to SDCP by SDG&E), the customer will be moved to the Residential Non-CARE adder rate.
 - ii. If a customer account enrolls in either the CARE or FERA programs (as communicated to SDCP by SDG&E), the customer will be moved to the Residential CARE adder rate.

E) Monthly Settlement of SDCP Charges/Credits:

All NBT customers will pay monthly for all applicable charges including the fixed charges within the OAS and any additional net charges due to SDCP and SDG&E. Customers will have net charges due in a given month if the sum of their Import Charges and Export Credits is greater than zero. Each customer will receive a statement as part of their monthly SDG&E bill indicating accrued SDCP Electricity Charges for Imported Electricity and/or SDCP Export Credits for Exported Electricity during the current monthly billing cycle. When a customer's SDCP credits during the monthly billing cycle result in an accrued credit balance in excess of currently applicable SDCP Electricity Charges, the value of those credits shall be noted on the customer's bill and carried over as a bill credit for use in a subsequent billing cycle(s).

A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable SDCP Generation Electricity Charges, reducing otherwise applicable Generation Electricity Charges by an equivalent amount to such credits. Any remaining credits reflected on the customer's billing statement shall be carried forward to subsequent billing cycle(s) until either (i) the excess credit is used to satisfy current Generation Electricity Charges, (ii) the customer no longer receives service from SDCP, or (iii) an annual account true up is performed.

F) SDCP Annual True Up & Cash Out Processes:

- i) SDCP Annual True Up: At the end of the most recent twelve (12) monthly billing cycles ("Relevant Period") of each NBT customer, SDCP will perform a true up of all active customers. SDCP will determine whether or not each customer has produced net surplus electricity, as measured in kWh, over the most recent 12



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billing cycles, or the period of time extending from the customer's commencement of participation in SDCP's NBT Tariff through the end of their Relevant Period, whichever is shorter ("True Up Period") and at each anniversary date thereafter.

- a. NBT Generation Payment Credit Refund: If the customer has an Export Credit Balance but incurred SDCP usage charges earlier within the same SDCP Annual True Up period, the credits will be applied against any of these charges still due.

If these charges were already paid during the Relevant Period being trued up, the amount will instead be carried over as a bill credit for use in the subsequent Relevant Period(s) for the benefit of the customer.

- b. Electricity Export Credit Refund: At the time of the Annual True Up, if the customer has accumulated Electricity Export Credits in excess of any currently outstanding Electricity Charges, those credits will be carried over as a bill credit for use in the subsequent Relevant Period(s) for the benefit of the customer up to the total SDCP Electricity Charges paid by the customer on the same NBT account during the applicable Relevant Period ("Refundable EEC"), consistent with SDCP's Annual Cash Out practice in Section (F)(ii). Any unused Electricity Export Credits over what is carried over as a bill credit for use in the subsequent Relevant Period (s) for the benefit of the customer up to the total SDCP Electricity Charges paid by the customer shall not be carried forward to the start of a new Relevant Period; rather, the unused Electricity Export Credits shall be zeroed out and a new Relevant Period will commence.

- c. Net Surplus Compensation ("NSC"): SDCP will determine at the time of Annual True Up whether each customer has produced Net Surplus Electricity over the course of the Relevant Period. If a customer has produced Net Surplus Electricity, then SDCP shall credit such customer an amount that is equal to the monthly Net Surplus Compensation rate per kWh, as defined in Section F.i.c.1, multiplied by the quantity of Net Surplus Electricity produced by the customer during the Relevant Period, consistent with SDCP's Annual Cash Out practice in Section F.ii below. The SDCP NSC Rate is posted to SDCP's website and updated monthly.¹²

1. SDCP's NSC Rate is equal to the applicable monthly SDG&E's NSC, which is defined by the CPUC as "a simple rolling average of each utility's Default Load Aggregation Point ("DLAP") price from 7 a.m. to 5 p.m.", and "calculated monthly based on the hourly day-ahead electricity market price at each utility's DLAP price published on the California Independent System Operator ("CAISO") Open Access Same-Time Information System ("OASIS"), and ending the twentieth

¹² SDCP Net Energy Metering (NEM) - <https://sdcommunitypower.org/programs/net-energy-metering/>



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day of each month¹³, of the customer true up month plus \$0.0075/kWh.

- ii) **SDCP Annual Cash Out:** At the end of each customer's relevant period, any current customer who has a combined Refundable EEC and Net Surplus Compensation value of \$100 or more that exceeds any outstanding Electricity Charges, will be sent a payment by check via United States Postal Service Mail to the customer's U.S. mailing address on file at the time of mailing for the credit balance on their account, as determined through SDCP's Annual True Up process as specified in this section F(i), above. Customers receiving direct payment will have an equivalent amount removed from their NBT account balance at the time of check issuance. In the event that customers have a combined Refundable EEC and Net Surplus Compensation value that does not exceed \$100, such credit balances will be carried forward into the subsequent Relevant Period(s) to offset future SDCP Electricity Charges as a Rollover. All NBT accounts will be reset to zero kWh annually as of the customer's next monthly billing cycle and the only NBT credits carried forward on the customer's account will be the combined Refundable EEC and Net Surplus Compensation credit balances less than \$100.

Payments will be released up to 60 days after true up billing. Checks will expire 90 calendar days after issuance. If checks expire, customers may request the reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer's request.

- iii) **SDCP Cash Out for Terminations:** Customers who close their electric account through SDG&E, opt out of SDCP and return to bundled service, or move outside of the SDCP service area prior to the end of their relevant period, shall be trued up according to SDCP's Annual True Up Process. If applicable, the customer shall receive a refund payment by check via United States Postal Service mail to the customer's U.S. mailing address on file within 60-90 days after final billing to allow for any usage revisions and/or any adjustments from SDG&E for any Export Electricity Credits on their account that exceed outstanding Electricity Charges at the time of true up, up to the total amount of Electricity Charges paid by the customer during the Relevant Period along with Net Surplus Compensation if they are determined to have produced Net Surplus Electricity.

Checks will expire 90 calendar days after issuance. If checks expire or are returned to SDCP, customers may request the one-time reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer's request. If the customer did not produce Net Surplus Electricity, as measured in kWh, they will not receive a direct payment. After one year, the funds will be

¹³ [CPUC Decision 11-06-016 https://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/137431.pdf](https://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/137431.pdf)



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considered unclaimed property and turned over to the California State Controller's Office.

SDCP reserves the right to work with customers on a case-by-case basis to transfer Net Surplus Electricity credits.

SDG&E NBT PROGRAM: Customers are subject to all applicable terms and conditions and billing procedures of SDG&E for SDG&E charges as described in SDG&E's Schedule NBT (with the exception of SDCP OAS charges, which are described in SDCP's rate schedules). SDCP may amend this NBT Tariff to align with SDG&E Schedule NBT following CPUC approval of the SDG&E Schedule NBT and any future amendments to the SDG&E Schedule NBT. SDCP calculates and applies generation charges and credits on a monthly basis. SDG&E will continue to calculate and apply charges and credits for delivery, transmission, and other services as detailed in SDG&E's NBT Rate Schedule, and SDCP credits cannot be applied to any SDG&E charges.

Please review the SDG&E Schedule NBT¹⁴ for more information.

RETURN TO SDG&E BUNDLED SERVICE: SDCP customers participating in the SDCP NBT Program may opt out and enroll in SDG&E's bundled service, subject to any applicable restrictions imposed by SDG&E. Customers who opt out of SDCP service are subject to SDG&E Schedule NBT. SDCP will perform a true up of the customer's account in accordance with Section (F)(iii) at the time of return to SDG&E bundled service, and customers will be subject to SDG&E's then current rates, terms and conditions of service at the time of enrollment in SDG&E bundled service.

For details concerning opting out of SDCP service, please contact SDCP Customer Service by phone at 888-382-0169 or via email at customerservice@sdcommunitypower.org.

MISCELLANEOUS: The Chief Executive Officer ("CEO") of SDCP or their designee may, in their discretion, reserve the right to work with customers on a case-by-case basis to transfer NEM and NSC credits and/or otherwise deviate from the process specified in this policy for reasons including but not limited to cases of unforeseeable events, inconsistent receivable data from SDG&E, exigent circumstances, SDG&E bill presentment limitations or customer hardship.

¹⁴ See <https://www.sdge.com/solar/solar-billing-plan>



SAN DIEGO COMMUNITY POWER Staff Report – Item 17

To: San Diego Community Power Board of Directors

From: Nelson Lomeli, Program Manager
Lucas Utouh, Director of Data Analytics & Account Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of updates to the existing Net Energy Metering (NEM) Tariff

Date: October 26, 2023

RECOMMENDATION

Approve the updates to the existing Net Energy Metering (NEM) tariff.

BACKGROUND

What is Net Energy Metering and How Does it Work?

Net Energy Metering ("NEM") is a statewide program available to customers that install an onsite renewable energy generation system, like rooftop solar. This program allows customers to reduce their electricity consumption and bills.

NEM allows customers who generate their own energy ("customer-generators") to serve their energy needs directly onsite and to receive a financial credit on their electric bills for any surplus energy fed back to their utility. In technical terms, the excess energy is paid at the customer's otherwise applicable rate schedule and time-of-use period. This credit is reflected as a negative number on the bill.

For example: if a commercial customer is on the time metered small general service rate schedule, A-TOU, and they are generating and exporting electricity in the summer during the 12:00 PM – 4:00 PM timeframe, every kWh of electricity exported would be paid at \$0.2205 (the A-TOU rate for that time of use period).

Every billing period, the utility determines how much electricity was exported and how much electricity was consumed at each time-of-use period. If the generation credits exceed the usage consumption charges, a customer receives a credit on their bill which will be applied to future usage costs within the relevant period. If a customer's consumption charges exceed the generation credits, a consumption charge is applied on the bill.

True Up and Billing

Over the course of 12 months, a period commonly referred to as the Relevant Period, the utility tracks how many generation credits or consumption charges a customer accrues

each month and banks them. At the end of the 12 months, the utility engages in a reconciliation process called true up where all credits, charges, minimum bill payments, and any adjustments are summed. If the customer has more consumption charges than generation credits, the customer is sent a bill for the outstanding charges. However, if the customer has more generation credits than consumption charges, the customer does not owe anything, the credits are zeroed out, and their net usage is re-set or trued up.

During the Net Usage true up process, the utility also determines how much net kWh electricity was either exported or consumed during the 12 months. They sum up all the monthly net generation kWh and monthly net consumption kWh to determine a final net kWh amount for the year. If the customer was a net consumer (*i.e., they consumed more electricity from the utility than they exported and thus ended up with net positive (+) kWh*) the customer does not receive any compensation. However, if the customer was a net generator (*i.e., they exported more electricity than they consumed in the year and thus ended up with net negative (-) kWh*) they will then get compensated using the utility's applicable monthly Net Surplus Compensation (NSC) rate.

Net Surplus Compensation:

When a customer exports more electricity to the grid than they consumed during the relevant period, the customer is eligible to receive compensation. The amount of compensation is determined based on the utility's applicable monthly Net Surplus Compensation (NSC) Rate, which varies every month and is based on the wholesale prices of electricity. The California Public Utilities Commission defines it as a rolling average based on the utility's Default Load Aggregation Point (DLAP) price from 7 a.m. to 5 p.m. multiplied by the annual net usage exported by the customer. For the month of October 2023, SDG&E's NSC rate is \$0.04591/kWh.

Example:

Annual net generation = -450 kWh

October 2023 Net Surplus Compensation Rate = \$0.04591 per kWh

Total Compensation = \$20.70

ANALYSIS AND DISCUSSION

Over the last several months, Staff undertook a significant analysis to broadly evaluate how SDCP compensates customers for the on-site generation of energy. The analysis included 1) consideration for enhancements to the current SDCP NEM policy by removing the Net Surplus Compensation (NSC) cap, 2) consideration to incentivize customers to install new on-site generation that aligns compensation with the needs of the grid (*i.e.* NBT), and 3) potential programs designed to incentivize the pairing of storage with new on-site installations to support grid resilience. Comprehensively, Staff believes this package of recommended actions would result in the most customer-centric, progressive on-site generation compensation strategy in the State. The strategy carefully balances multiple priorities including supporting the local San Diego solar and storage industry, increasing access to distributed energy resources to Communities of Concern and low-

income customers, an increasing statewide focus on grid resilience, customer fairness, and financial prudence for the agency.

This agenda item is focused on the consideration to enhance the current SDCP NEM policy. Details on Net Billing Tariff are included in Agenda Item 6 of the October Community Advisory Committee meeting. Progress updates on a potential future solar-plus-storage incentive program will be brought to future Community Advisory Committee meetings.

Status of current NEM customers

Based on data from SDG&E as of 9/25/2023, SDCP is currently serving 152,173 NEM accounts. The table below captures the breakdown of NEM accounts currently being served across SDCP's service territory.

Jurisdiction	Number of Accounts	Percent
City of Imperial Beach	836	0.5%
City of La Mesa	4,392	2.9%
City of Encinitas	5,894	3.9%
City of Chula Vista	18,792	12.3%
City of San Diego	90,559	59.5%
County of San Diego	30,846	20.3%
City of National City	854	0.6%
Total	152,173	

**Please note that SDCP is currently still enrolling approximately 5,000 NEM accounts a month until March 2024 as part of Phase 4 customer enrollment in National City and Unincorporated County of San Diego.*

The vast majority of NEM accounts (~98%) are residential with commercial, agricultural and industrial customers making up the remaining ~2%.

Customer Type	Number of Accounts	Percent
Non-residential	2,796	2.0%
Residential	149,377	98.0%
Total	152,173	

Customers enrolled in the California Alternative Rates for Energy (CARE) program or the Family Electric Rate Assistance (FERA) program, which provides discounted rates, make up 12% of NEM accounts.

A look-back analysis conducted for usage on our NEM customers in 2022 determined that 35% of our NEM accounts are net generators with an average excess generation production of 2,122 kWh per a 12-month relevant period.

Background on the existing NEM Tariff Policy

The Board of Directors approved SDCP's original Net Energy Metering Program in December of 2020. As part of the original Net Energy Metering Program, staff provided great details around the mechanics of how SDCP's NEM program was going to be set up and with the goal of offering a very progressive but financially prudent NEM program, updates were brought to the Board in May 2021 before the commencement of Phase 2 mass enrollment for Commercial customers in June 2021. With the May 2021 update that the Board approved, staff recommended adoption of a Net Surplus Compensation (NSC) rate that is set to match SDG&E's monthly NSC Rate with a \$0.0075/kWh adder along with establishing an SDCP Net Surplus Compensation limit of \$2,500 per account per relevant period to protect SDCP and limit the financial risk. This meant that individual NEM customers would not receive more than \$2,500 in compensation for excess net generation per NEM account. As part of the due diligence then, staff evaluated the compensation limits of other CCAs and found most had a \$5,000 per account per year limit. Staff recommended a \$2,500 per account per relevant period compensation limit due to the significantly larger number of NEM accounts served by SDCP and the growing number of rooftop solar installations in our area. This compensation limit offered protection to SDCP from volatile wholesale market prices and therefore volatile NSC rates especially at a time when we were launching service to customers for the first time and did not have any reserves.

As part of the May 2021 NEM program update, staff also recommended that the Board standardize NEM settlement and billing for all customer classes to a monthly process but offer yearly settlement and billing as an option for customers that wish to enroll into that option.

The monthly settlement and billing method allows customers that are net consumers (65% of our NEM accounts) to pay smaller monthly statements instead of one large bill for an entire year's worth of usage charges. This avoids the bill shock that net consumers

can experience when they get their true up bill and will reduce the potential risk of NEM customers opting out due to the misconception of SDCP increasing their bills.

Overview of the latest staff recommended changes to the NEM Program/Tariff policy as of October 2023

With the growth of SDCP service in our region and experience gained in serving NEM customers over the past 2 years, staff has received a great deal of meaningful feedback from stakeholders in the region with regards to how best to improve the customer experience of both net consumers and net generators at the time of their annual true up.

Staff has heard from NEM customers that the transition of their electric generation service to SDCP at the conclusion of their relevant period with SDG&E has been appreciated, as this process ensures minimal inadvertent impacts to any accrued generation credits under SDG&E's bundled service and reduces customer confusion.

Customers have also provided overwhelming feedback to staff that the default monthly billing and settlement option (which was intended to assist the majority of NEM customers who end up as net consumers at the end of the relevant period to avoid large true up bills) may at times not be beneficial in terms of a customer's ability to accrue credits and offset their charges accordingly had they been in an annual billing and settlement option.

NEM customers have also voiced their concerns on the \$2,500 Net Surplus Compensation (NSC) limit for net generators per account per relevant period especially as it relates to SDCP's commitment and strategic goal to source and promote local renewable power. It should be noted that SDG&E's bundled NEM program/tariff does not have any Net Surplus Compensation (NSC) limit for net generators.

With our customers being the cornerstone of everything we do here at SDCP along with our commitment and strategic goal to strongly source and promote local renewable power, staff will be recommending that the Board should review and approve two critical updates to our existing NEM program/tariff:

1. Removal of the \$2,500 Net Surplus Compensation (NSC) limit per account per relevant period. At the end of each customer's relevant period, any current NEM customer who is a net generator with an accrued Net Surplus Compensation equal to or greater than \$100, as determined during the applicable true up process, will be sent a direct payment by check to the customer's mailing address on file.
2. Adoption of a NEM Generation Credit Refund whereby at the time of the annual true up, if a customer on SDCP's default monthly settlement and billing option has accumulated any NEM generation credits in excess of any charges accrued over the relevant period, those NEM generation credits will be carried over as a bill credit for use in the subsequent relevant period(s) for the benefit of the customer up to the total SDCP charges assessed and/or paid on the NEM account during the Relevant Period being tried up.

Attachment A shows the proposed changes to the NEM Tariff Policy in redline for ease of tracking should the Board adopt Staff's recommendation. Attachment B reflects the updated, clean version of the NEM Tariff Policy with all redlines accepted.

COMMITTEE AND/OR SUBCOMMITTEE REVIEW

Both the Community Advisory Committee and Finance Risk Management Committee received an update on this item in their October 2023 meetings and were in support of Staff's recommendations.

FISCAL IMPACT

Using February 2023 SDG&E's NSC of \$0.14538/kWh (the highest NSC observed in the last decade) plus the \$0.0075/kWh adder and the look-back usage from 2022, staff estimates approximately \$1.1 million in incremental Net Surplus Compensation; whereas looking at the 5-year average of SDG&E's NSC of \$0.04138/kWh plus our adder, staff estimates approximately \$228,104 in incremental Net Surplus Compensation.

Actual compensation amount will vary depending on several factors including, number of NEM accounts, number of NEM accounts that are net generators, amount of electricity net generated, wholesale prices of electricity, month of true up, customer system size, customer behavior, and weather.

ATTACHMENTS

Attachment A: NEM Program Policy Upd. 10-26-2023

Attachment B: NEM Program Policy Upd. 10-26-2023 (Clean)



Policy Title Net Energy Metering ~~Program~~ Tariff Policy

Effective Date

Original: 12/17/2020

Revision 1: 5/27/2021

Revision 2: 10/26/2023

Net Energy Metering ~~Program~~ Tariff Policy

A. PURPOSE

The ~~purpose~~ of this Net Energy Metering (~~NEM~~) ~~Program~~ Tariff Policy (Policy) is to ~~provide~~ describe the process for how by which Net Energy Metering (~~"NEM"~~) (~~commonly referred to as rooftop solar~~) customers are enrolled into with and served by San Diego Community Power (SDCP).

B. APPLICABILITY

Customers enrolled in San Diego Gas & Electric Company's (SDG&E) Net Energy Metering NEM Program (SDG&E NEM) or those who submitted a complete NEM interconnection agreement to SDG&E prior to April 15, 2023 that has been approved and who have not opted out of SDCP service, will ~~be~~ automatically enrolled in SDCP's NEM take service from SDCP pursuant to the terms of this Policy Program tariff. Phase-in will occur as stated in Section D below. The ~~Program~~ tariff Policy is applicable ~~for to~~ all NEM customers who install and use a Renewable Electrical Generation Facility (~~e.g., rooftop solar~~) as defined by and eligible under SDG&E's Schedule NEM – Net Energy Metering tariff (i.e., NEM 1.0) or ~~successor SDG&E's~~ Successor NEM tariff (i.e., NEM 2.0), which may be amended or replaced by SDG&E from time to time. A customer's eligible Renewable Electrical Generation Facility must fall within the capacity limits described in SDG&E's Schedule NEM or Successor NEM and must be located on the customer's owned, leased, or rented premises, must be interconnected and operated in parallel with SDG&E's transmission and distribution systems, and must be intended primarily to offset part or all of the customer's own electrical requirements.

This ~~rate schedule tariff~~ Policy will shall be available govern the terms of service of on a first-come, first served basis to to customers that provide SDG&E with a completed SDG&E NEM application and comply with all SDG&E NEM requirements as described in SDG&E's Schedule NEM or Successor NEM tariff. This includes, but is not limited to, customers served by NEM-V (Virtual Net Energy Metering), VNM-A (Virtual Net Energy Metering for Multifamily Affordable Housing), VNEM-SOMAH (Virtual Net Energy Metering - Solar on Multifamily Affordable Housing) and Multiple Tariff facilities as described by SDG&E's Schedule NEM.

This tariff Policy is not applicable to customers taking service under SDG&E's Net Billing Tariff/Solar Billing Plan.

C. TERRITORY

SDCP service area.

D. ~~INITIAL~~ PHASE-IN

SDCP phased its NEM customers into service on a monthly basis primarily starting in-in Phase 3 of customer enrollment, which commenced in 2022. The transition into SDCP's service occurs at the conclusion of a NEM customer's R-relevant P-period with SDG&E, as that term is defined in SDG&E's applicable NEM tariff. ~~This approach~~ The purpose of this approach is to minimize any-potential impacts from when the SDG&E NEM customers' true ups occur and when SDCP's service begins.

E. RATES

All rates charged under this schedule-Policy will be in accordance with the customer's otherwise applicable SDCP rate schedule (OAS). A customer served under this schedule-Policy is responsible for all charges from its OAS, including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to SDCP or SDG&E. Charges for energy (kWh) supplied by SDCP will be based on the net metered usage in accordance with this Policy.

F. BILLING

1. Net Consumer and Net Generator: "Net Consumer" is defined as a customer having overall positive usage during a specific billing cycle ~~cycle~~ as measured in kilowatt-hours (kWh). "Net Generator" is defined as a customer having overall negative usage during a specific billing cycle as measured in kWh.
2. For a customer with Non-Time of Use (TOU) Rates: If the customer is a "Net Consumer," the customer will be billed in accordance with the customer's OAS. If the customer is a "Net Generator," any net energy production shall be valued in accordance ~~efwith~~ the customer's OAS. The calculated value of any net energy production shall be credited to the customer according to the OAS.
3. For a customer with TOU Rates: If the customer is a Net Consumer during any discrete TOU period reflected within a specific billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates / charges, as described in the customer's OAS. If the customer is a Net Generator during any discrete TOU period reflected within a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of such net energy production shall be credited to the customer according to the OAS.

4. Monthly Settlement and Billing:

- a. ~~-~~All NEM customers will receive a statement in their monthly SDG&E bill indicating any accrued charges for electric energy usage during the current billing cycle. These charges are due and payable on a monthly basis, in accordance with the OAS. A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable charges, reducing otherwise applicable charges by an equivalent amount to such credits. Any remaining balance reflected on each customer's billing statement shall be carried forward to subsequent billing cycle(s) until either excess credit is sufficient to satisfy the charges or an account true-up is performed. When a customer's net energy production results in an accrued credit balance in excess of currently applicable charges, the value of any net energy production during the billing

cycle (in excess of currently applicable charges) shall be valued at the OAS and noted on the customer's bill, including the quantity of any surplus NEM production (measured in kWh), and carried over as a bill credit for use in a subsequent billing cycle(s).

- a. ~~NEM Generation Credit Refund: At the time of the aAnnual tTrue u-Up, if the a~~
~~customer on SDCP's default monthly settlement and billing option has~~
~~accumulated any NEM generation credits in excess of any currently outstanding~~
~~charges, those NEM generation credits will be refundedcarried over as a bill~~
~~credit for use in the subsequent Relevant Period(s) to thefor the benefit of the~~
~~customer up to the total SDCP charges assessed and/or paid by the customer on~~
~~the NEM account during the Relevant Period being trued up.~~

- 4.5. ~~Optional Yearly Settlement and Billing: Residential and Non-residential~~
~~customers, as determined by their OAS, NEM customers~~ may elect to receive yearly
settlement and billing by notifying SDCP. Customers electing a yearly settlement and
billing option will receive a statement in their monthly SDG&E bill indicating any accrued
SDCP charges or credits for electric energy usage or generation during the current
billing cycle. Charges are not due and payable; rather, the charges or credits are
calculated in accordance with the OAS and tracked over the course of the Rrelevant
Pperiod. At the end of the Rrelevant Pperiod, any accrued charges in excess of
generation credits are due and payable on the next bill. If at the end of the relevant
period a customer has produced net surplus energy, defined as energy generated and
exported to the grid in excess of energy consumed by the customer, as measured in
kWh~~excess generation credits~~, the customer will be paid out in accordance with the
SDCP True-up & Cash-Out Process set forth at Section 6.5.

5.6. SDCP True-Up & Cash-Out Processes.

- a. "True-Up": At the end of each NEM customer's Rrelevant Pperiod, SDCP will
determine whether or not each customer has produced net surplus energy, defined
as energy generated and exported to the grid in excess of energy consumed by the
customer, as measured in kWh, over the most recent 12 billing cycles, or the period
of time extending from the customer's commencement of participation in SDCP's
NEM program through the end of their 12-month Rrelevant Pperiod, whichever is
shorter (the "True-Up Period"). If the customer has not produced net surplus energy
at the end of the applicable Rrelevant Pperiod during the True-Up Period, all NEM
credits, if any, generated through participation in SDCP's NEM program in excess of
currently applicable SDCP charges shall be set to zero and any remaining balance
will be due and payable.

However, if a customer has produced net surplus energy during their True-Up
Period, then SDCP shall compensate such customer at a Net Surplus Compensation
(NSC) amount equal to the SDCP NSC Rate per kWh, as defined in section 6.b,
multiplied by the quantity of net surplus energy produced by the customer during the
True-Up Period, consistent with SDCP's cash-out practice.

- b. “SDCP’s NSC Rate.” is defined as and equal to the monthly SDG&E’s NSC, which is defined by the California Public Utilities Commission as “a simple rolling average of each utility’s Default Load Aggregation Point (DLAP) price from 7 a.m. to 5 p.m.”, and “calculated monthly based on the hourly day-ahead electricity market price at each utility’s DLAP price published on the California Independent System Operator (CAISO) Open Access Same-Time Information System (OASIS,) and ending the twentieth day of each month”, of the customer true-up month plus \$0.0075/kWh.
- c. “Cash -Out and Payment”: At the end of each customer’s relevant period, any current NEM customer who is a net generator with an accrued Net Surplus Compensation equal to or greater than \$100, as determined during the applicable true-up process, will be sent a direct payment by check, ~~up to \$2,500~~ per account per relevant period. Net Surplus Compensation less than \$100 will be rolled over into the next relevant period and used to offset future charges. In either scenario, customers will have an equivalent credit removed from their NEM account balance at the time of check issuance or roll-over. All NEM accounts will be reset to zero kWh upon true-up.

Payments will be released up to 30-60 days after true-up billing. Checks will expire 90 days after issuance. If checks expire or are returned to SDCP, customers may request the one-time reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer’s request.
- d. “Aggregated NEM”: Pursuant to California Public Utilities Code section 2827(h)(4)(B), aggregated NEM customers are “permanently ineligible to receive net surplus electricity compensation.” Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for SDCP’s Cash-Out as described in Section 5. All other NEM rules apply to aggregated NEM accounts.

G. ACCOUNT CLOSURES

Customers who close their electric account through SDG&E, opt out of SDCP and return to bundled service, or move outside of the SDCP service area prior to the end of their Relevant Period will be trued up according to SDCP’s NEM policy. Customers that have produced net surplus energy, will be paid out in accordance with the SDCP true-up & cash-out processes. Payments will be released within 60-90 days~~30 days~~ after final billing to allow for any usage revisions and/or adjustments from SDG&E. Checks will expire 90 days after issuance. If checks expire or are returned to SDCP, customers may request the one-time reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer’s request. If customer did not produce net surplus energy, as measured in kWh, they will not receive a direct payment.

SDCP reserves the right to work with customers on a case-by-case basis to transfer NEM credits, ~~and/or otherwise deviate from the process specified in this policy for reasons including but not limited to cases of unforeseeable events, inconsistent receivable data from SDG&E, exigent circumstances, SDG&E bill presentment limitations or customer hardship.s.~~

H. SDG&E NEM SERVICES

Customers are subject to the conditions and billing procedures of SDG&E for services

outside of electric generation~~their non-generation services~~, as described in SDG&E's applicable NEM tariffs and options addressing NEM service. Customers should be advised that while SDCP may settle out balances for generation on a monthly basis, SDG&E will continue to assess charges for delivery, transmission, and other services they provide. Customers are encouraged to review SDG&E's most up-to-date NEM tariffs, which are available at www.sdge.com.

I. RETURN TO SDG&E BUNDLED SERVICE

Customers with NEM service may opt -out and return to SDG&E bundled service at any time. SDCP will perform a true -up of the customer's account in accordance with Section 65, at the time of return to SDG&E bundled service, and customers will be subject to SDG&E's then current rates, terms and conditions of service. For details, please visit www.sdge.com.

J. MISCELLANEOUS

The Chief Executive Officer (CEO) of SDCP or their designee may, in their discretion, reserve the right to work with customers on a case-by-case basis to transfer NEM and NSC credits and/or otherwise deviate from the process specified in this policy for reasons including but not limited to cases of unforeseeable events, inconsistent receivable data from SDG&E, exigent circumstances, SDG&E bill presentment limitations or customer hardship.



Policy Title Net Energy Metering Tariff Policy

Effective Date

Original: 12/17/2020

Revision 1: 5/27/2021

Revision 2: 10/26/2023

Net Energy Metering Tariff Policy

A. PURPOSE

The purpose of this Net Energy Metering Tariff Policy (Policy) is to describe the process by which Net Energy Metering (NEM) customers are enrolled into and served by San Diego Community Power (SDCP).

B. APPLICABILITY

Customers enrolled in San Diego Gas & Electric Company's (SDG&E) NEM Program (SDG&E NEM), or those who submitted a complete NEM interconnection agreement to SDG&E prior to April 15, 2023 that has been approved and who have not opted out of SDCP service, will automatically take service from SDCP pursuant to the terms of this Policy. Phase-in will occur as stated in Section D below. This Policy is applicable to all NEM customers who install and use a Renewable Electrical Generation Facility as defined by and eligible under SDG&E's Schedule NEM – Net Energy Metering tariff (i.e., NEM 1.0), or SDG&E's Successor NEM tariff (i.e., NEM 2.0), which may be amended or replaced by SDG&E from time to time. A customer's eligible Renewable Electrical Generation Facility must fall within the capacity limits described in SDG&E's Schedule NEM or Successor NEM and must be located on the customer's owned, leased, or rented premises, must be interconnected and operated in parallel with SDG&E's transmission and distribution systems, and must be intended primarily to offset part or all of the customer's own electrical requirements.

This Policy shall govern the terms of service of customers that provide SDG&E with a completed SDG&E NEM application and comply with all SDG&E NEM requirements as described in SDG&E's Schedule NEM or Successor NEM tariff. This includes, but is not limited to, customers served by NEM-V (Virtual Net Energy Metering), VNM-A (Virtual Net Energy Metering for Multifamily Affordable Housing), VNEM-SOMAH (Virtual Net Energy Metering - Solar on Multifamily Affordable Housing) and Multiple Tariff facilities as described by SDG&E's Schedule NEM.

This Policy is not applicable to customers taking service under SDG&E's Net Billing Tariff/Solar Billing Plan.

C. TERRITORY

SDCP service area.

D. PHASE-IN

SDCP phased its NEM customers into service on a monthly basis primarily starting in Phase 3 of customer enrollment, which commenced in 2022. The transition into SDCP's service occurs at the conclusion of a NEM customer's Relevant Period with SDG&E, as that term is defined in SDG&E's applicable NEM tariff. The purpose of this approach is to minimize potential impacts from when the SDG&E NEM customers' true-ups occur and when SDCP's service begins.

E. RATES

All rates charged under this Policy will be in accordance with the customer's otherwise applicable SDCP rate schedule (OAS). A customer served under this Policy is responsible for all charges from its OAS, including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to SDCP or SDG&E. Charges for energy (kWh) supplied by SDCP will be based on the net metered usage in accordance with this Policy.

F. BILLING

1. Net Consumer and Net Generator: "Net Consumer" is defined as a customer having overall positive usage during a specific billing cycle as measured in kilowatt-hours (kWh). "Net Generator" is defined as a customer having overall negative usage during a specific billing cycle as measured in kWh.
2. For a customer with Non-Time of Use (TOU) Rates: If the customer is a "Net Consumer," the customer will be billed in accordance with the customer's OAS. If the customer is a "Net Generator," any net energy production shall be valued in accordance with the customer's OAS. The calculated value of any net energy production shall be credited to the customer according to the OAS.
3. For a customer with TOU Rates: If the customer is a Net Consumer during any discrete TOU period reflected within a specific billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates / charges, as described in the customer's OAS. If the customer is a Net Generator during any discrete TOU period reflected within a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of such net energy production shall be credited to the customer according to the OAS.
4. Monthly Settlement and Billing:
 - a) All NEM customers will receive a statement in their monthly SDG&E bill indicating any accrued charges for electric energy usage during the current billing cycle. These charges are due and payable on a monthly basis, in accordance with the OAS. A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable charges, reducing otherwise applicable charges by an equivalent amount to such credits. Any remaining balance reflected on each customer's billing statement shall be carried forward to subsequent billing cycle(s) until either excess credit is sufficient to satisfy the charges or an account true up is performed. When a customer's net energy production results in an accrued credit balance in excess of currently applicable charges, the value of any net energy production during the billing cycle (in excess of currently applicable charges) shall be valued at the OAS and noted on the customer's bill, including the quantity of any surplus NEM production (measured in kWh), and carried over as a bill credit for use in a subsequent billing cycle(s).
 - b) NEM Generation Credit Refund: At the time of the annual true-up, if a customer on SDCP's default monthly settlement and billing option has accumulated any NEM generation credits in excess of any currently outstanding charges, those NEM generation credits will be carried over as a bill credit for use in the subsequent Relevant Period(s) for the benefit of the customer up to the total SDCP charges assessed and/or

paid on the NEM account during the Relevant Period being true-up.

Optional Yearly Settlement and Billing: NEM customers may elect to receive yearly settlement and billing by notifying SDCP. Customers electing a yearly settlement and billing option will receive a statement in their monthly SDG&E bill indicating any accrued SDCP charges or credits for electric energy usage or generation during the current billing cycle. Charges are not due and payable; rather, the charges or credits are calculated in accordance with the OAS and tracked over the course of the Relevant Period. At the end of the Relevant Period, any accrued charges in excess of generation credits are due and payable on the next bill. If at the end of the relevant period a customer has produced net surplus energy, defined as energy generated and exported to the grid in excess of energy consumed by the customer, as measured in kWh, the customer will be paid out in accordance with the SDCP True up & Cash Out Process set forth at Section 6.

5. SDCP True Up & Cash Out Processes.

- a. “True-Up”: At the end of each NEM customer’s Relevant Period, SDCP will determine whether or not each customer has produced net surplus energy, defined as energy generated and exported to the grid in excess of energy consumed by the customer, as measured in kWh, over the most recent 12 billing cycles, or the period of time extending from the customer’s commencement of participation in SDCP’s NEM program through the end of their 12-month Relevant Period, whichever is shorter (the “True-Up Period”). If the customer has not produced net surplus energy at the end of the applicable Relevant Period during the True-Up Period, all NEM credits, if any, generated through participation in SDCP’s NEM program in excess of currently applicable SDCP charges shall be set to zero and any remaining balance will be due and payable.

However, if a customer has produced net surplus energy during their True-Up Period, then SDCP shall compensate such customer at a Net Surplus Compensation (NSC) amount equal to the SDCP NSC Rate per kWh, as defined in section 6.b, multiplied by the quantity of net surplus energy produced by the customer during the True-Up Period, consistent with SDCP’s cash out practice.

- b. “SDCP’s NSC Rate”: is defined as and equal to the monthly SDG&E’s NSC, which is defined by the California Public Utilities Commission as “a simple rolling average of each utility’s Default Load Aggregation Point (DLAP) price from 7 a.m. to 5 p.m.”, and “calculated monthly based on the hourly day-ahead electricity market price at each utility’s DLAP price published on the California Independent System Operator (CAISO) Open Access Same-Time Information System (OASIS,) and ending the twentieth day of each month”, of the customer true-up month plus \$0.0075/kWh.
- c. “Cash Out and Payment”: At the end of each customer’s Relevant Period, any current NEM customer who is a net generator with an accrued Net Surplus Compensation equal to or greater than \$100, as determined during the applicable true up process, will be sent a direct payment by check per account per Relevant Period. Net Surplus Compensation less than \$100 will be rolled over into the next Relevant Period and used to offset future charges. In either scenario, customers will have an equivalent credit removed from their NEM account balance at the time of check issuance or rollover. All NEM accounts will be reset to zero kWh upon true-up.

Payments will be released up to 60 days after true-up billing. Checks will expire 90 days after issuance. If checks expire or are returned to SDCP, customers may request the one-time reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer's request.

- d. *"Aggregated NEM"*: Pursuant to California Public Utilities Code section 2827(h)(4)(B), aggregated NEM customers are "permanently ineligible to receive net surplus electricity compensation." Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for SDCP's Cash Out as described in Section 5. All other NEM rules apply to aggregated NEM accounts.

G. ACCOUNT CLOSURES

Customers who close their electric account through SDG&E, opt out of SDCP and return to bundled service, or move outside of the SDCP service area prior to the end of their Relevant Period will be trued up according to SDCP's NEM policy. Customers that have produced net surplus energy, will be paid out in accordance with the SDCP true up & cash out processes. Payments will be released within 60-90 days after final billing to allow for any usage revisions and/or adjustments from SDG&E. Checks will expire 90 days after issuance. If checks expire or are returned to SDCP, customers may request the one-time reissuance of a check and SDCP will make a reasonable effort to reissue the check within 30 days of a customer's request. If customer did not produce net surplus energy, as measured in kWh, they will not receive a direct payment.

SDCP reserves the right to work with customers on a case-by-case basis to transfer NEM credits.

H. SDG&E NEM SERVICES

Customers are subject to the conditions and billing procedures of SDG&E for services outside of electric generation, as described in SDG&E's applicable NEM tariffs and options addressing NEM service. Customers should be advised that while SDCP may settle out balances for generation on a monthly basis, SDG&E will continue to assess charges for delivery, transmission, and other services they provide. Customers are encouraged to review SDG&E's most up-to-date NEM tariffs, which are available at www.sdge.com.

I. RETURN TO SDG&E BUNDLED SERVICE

Customers with NEM service may opt out and return to SDG&E bundled service at any time. SDCP will perform a true up of the customer's account in accordance with Section 6, at the time of return to SDG&E bundled service, and customers will be subject to SDG&E's then current rates, terms and conditions of service. For details, please visit www.sdge.com.

J. MISCELLANEOUS

The Chief Executive Officer (CEO) of SDCP or their designee may, in their discretion, reserve the right to work with customers on a case-by-case basis to transfer NEM and NSC credits and/or otherwise deviate from the process specified in this Policy for reasons including, but not limited to, cases of unforeseeable events, inconsistent receivable data from SDG&E, exigent circumstances, SDG&E bill presentment limitations, or customer hardship



SAN DIEGO COMMUNITY POWER Staff Report – Item 18

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director
Morgan Adam, Senior Local Renewable Development Manager

Via: Karin Burns, Chief Executive Officer

Subject: Update on Local Distributed Infill Plan

Date: October 26, 2023

RECOMMENDATIONS

Receive and file update on local distributed infill plan.

BACKGROUND

During the Strategic Planning Session held on April 21, 2023, Power Services presented an initial outline of a plan to meet the agency's goal of procuring at least 15% of load capacity by new, infill resources by 2035. As part of this presentation, the Board was informed that an update to the local infill plan would be presented in Fall 2023. The intent of this update is to convey the updated local distributed infill strategy.

ANALYSIS AND DISCUSSION

Recent Infill Achievements

- SDCP's rolling Local Request For Information ("RFI") remains open and has already brought in multiple projects under negotiation and contract, including the 35 MW Arrowleaf Solar+Storage facility (Imperial County, executed June 2023) and 19.5MW of long-term agreements recently executed with EnerSmart for Local RA from battery storage facilities in San Diego County.
- As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, 2023. Proposals will be due in late February 2024. SDCP is hosting two webinars this month to aid bidders with the solicitation process.

Current and Upcoming Infill Initiatives

1. Local Distributed Request For Offers ("RFO")

SDCP is releasing an RFO solicitation for distributed renewable energy resources (DERs) the week of October 23rd which will focus on a broad range of distribution-level renewable projects within San Diego County. The solicitation will seek offers for renewable resources as well as energy storage, both hybrid as well as stand-alone projects.

Offers will be due in December 2023 and SDCP expects to bring a handful of resulting contracts to the Energy Contract Working Group and then Board in Q1 2024 for review and consideration.

2. Feed-In-Tariff Expansion

As part of SDCP's distributed wholesale procurement strategy, expanding and restructuring the current Feed-In-Tariff (FIT) Program will strive to increase engagement and applications so that it can become a more substantial component of SDCP's wholesale procurement portfolio.

The proposed FIT update will include consultant feedback as well as market intel obtained through the Local Distributed RFO released this month. SDCP expects to bring recommendations for a revised tariff to the Board in late Q1 2024.

3. Ongoing Activities

In addition to the two upcoming initiatives above, several ongoing initiatives will further support SDCP's infill goals, including:

- DAC-GT and CSGT solicitation results,
- Local, rolling Request for Information (RFI),
- Continued collaboration with member agency staff to identify opportunities for renewable development,
- Initiatives through our Program offerings, such as Net Billing Tariff, SDCP Regional Energy Network, demand response, virtual power plants, etc.,
- Strategic initiatives with key accounts, local & federal government, and other public agencies, and
- Monitoring of impending Community Solar program updates currently being considered by the CPUC.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

The Local Distributed Infill plan updates were reviewed with SDCP's Energy Contract Working Group (ECWG).

FISCAL IMPACT

There is no direct fiscal impact of this update.

ATTACHMENTS

None.





SAN DIEGO COMMUNITY POWER Staff Report – Item 19

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Energy Storage Service Agreement with Desert Sands Energy Storage II,
LLC

Date: October 26, 2023

RECOMMENDATION

Adopt the proposed Renewable Energy Storage Service Agreement with Desert Sands Energy Storage II, LLC and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contracts that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term contracts lock in energy and capacity supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation and storage facilities that will achieve commercial operation during 2023 through 2026. Further, Decision 23-02-040 allowed LSEs to contract for long-lead time resources, including long duration storage, with commercial operations out into 2028 to meet its resource adequacy requirements.

The proposed Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 60 MW/480 MWh, 8-hour battery energy storage facility (Desert Sands) with Desert Sands Energy Storage II, LLC, a subsidiary of

NextEra Energy Resources Development, LLC (NextEra). The ESSA originated from an offer SDCP received in May 2023 via its 2023 Request for Offers for Standalone Storage. SDCP engaged with NextEra after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff negotiated the attached full toll ESSA for the purchase of capacity, energy arbitrage and ancillary services from the Desert Sands project, which is a standalone battery storage project to be developed in Riverside County by NextEra.

The Desert Sands project is part of a larger planned standalone storage installation. Clean Power Alliance has executed a contract for 75 MW/600 MWh of Desert Sands capacity. As previously reviewed with the Ad Hoc Energy Contracts Working Group, the contract offered a competitive price compared to other longer duration storage offerings. The ESSA also provides for a Guaranteed Commercial Operate date of April 1, 2027, which will provide sufficient buffer to help ensure the project meets the commercial operation date requirements under CPUC Decision 23-02-040.

Below is additional information regarding NextEra and the draft ESSA.

Background on NextEra:

- NextEra has over 33 years of experience with energy infrastructure development, predominantly renewable energy resources, in California
- NextEra has developed over 4 GW in California across more than 30 projects
- Notable recent projects from NextEra include:
 - Desert Sunlight, 230 MW storage, 2022
 - Arlington, 364 MW solar + 242 MW storage, 2022/2023
 - Desert Peak, 400 MW standalone storage, 2023
 - North Central Valley, 132 MW standalone storage, 2023
 - Resurgence Solar, 138 MW solar + 115 MW storage, 2023

Contract Overview – Desert Sands Energy Storage II, LLC

- Project: 60 MW/480 MWh (8-hour) lithium-ion battery energy system
- Project location: Riverside County, California
- Guaranteed commercial operation date: April 1, 2027
- Contract term: 20 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity



- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet guaranteed efficiency rates once the project is operational.

Community Benefits:

- NextEra is committed to a \$250,000 contribution to a community benefits fund that is to be established to directly benefit stakeholders in SDCP's service area.
- NextEra hosts a Renewable Energy Training (RET) simulation lab at the Desert Hot Springs High School in Desert Springs, CA (very nearby the Desert Sands project)
- NextEra has a collaborative partnership with College of the Desert (which serves the Coachella Valley region in Riverside County, CA) where NextEra provides training equipment and subject matter expertise in training students for solar construction.
- NextEra established an internship program that leads to career opportunities at NextEra solar and storage sites.

COMMITTEE REVIEW

The ECWG approved the shortlisting of the Desert Sands project on June 28, 2023. On September 5, 2023 the ECWG approved key ESSA terms to move forward with the execution of this ESSA.

FISCAL IMPACT

The competitive capacity pricing of the ESSA are confidential, but the long-term purchase of capacity, energy arbitration, and ancillary services will provide SDCP with significant value and cost certainty over the term of this ESSA.

ATTACHMENTS

Attachment A: Energy Storage Service Agreement with Desert Sands Energy Storage II, LLC (redacted version for commercially sensitive information)



ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Desert Sands Energy Storage II, LLC (“**Seller**”)

Buyer: San Diego Community Power, a California joint powers authority (“**Buyer**”)

Description of Facility: A 60 MW/480 MWh battery energy storage facility, located in Riverside County in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	Complete
Executed Interconnection Agreement	4/1/2024
Procurement of Major Equipment	12/1/2025
Obtain Discretionary Federal and State Permits	6/1/2026
Guaranteed Construction Start Date	6/1/2026
Transmission Owner In-Service Date	12/1/2026
Full Capacity Deliverability Status Obtained	The later of 6/1/27 or two (2) months after the Commercial Operation Date, subject to Section 2.3 of this Agreement
Guaranteed Commercial Operation Date	4/1/2027

Delivery Term: Twenty (20) Contract Years; provided, that such twenty (20)-year period shall commence on the Supply Plan Start Date as defined herein

Guaranteed Capacity: 60 MWAC at eight (8) hours of continuous discharge

Dedicated Interconnection Capacity: 60 MW

Guaranteed Seasonal Availability: A Seasonal Availability, calculated in accordance with Exhibit P to this Agreement, in a percentage amount no less than the percentages set forth in the following table for the corresponding Contract Year and Seasonal Period; provided, however that, to the extent any Contract Year includes two different Seasonal Periods, a weighted average Guaranteed Seasonal Availability shall be applied for such Contract Year:

Contract Year	Guaranteed Seasonal Availability Summer Season (May through October)	Guaranteed Seasonal Availability Winter Season (November through April)
1	■	■
2	■	■
3 – 20	■	■

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	■
2 – 20	■

Minimum Efficiency Rate: ■ for all Contract Years during the Delivery Term

Contract Price:

Contract Year	Contract Price
1 – 20	■

Product:

- ☒ Discharging Energy
- ☒ Installed Capacity and Effective Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes

Scheduling Coordinator: Buyer or Buyer's agent

Security Amount:

Development Security: ■

Performance Security: ■

■

■

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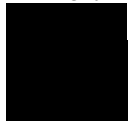
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ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of [REDACTED], 2023 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the 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 **Contract Definitions.** 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 3.7(c).

[REDACTED]

[REDACTED]

[REDACTED]

“**Affiliate**” 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. For purposes of this definition and the definition of “Permitted Transfer” and “Permitted Transferee”, “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 at least 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, direct or indirect ownership of at least 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. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement, and with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation,

storage, or transmission assets (such as a “yield co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP (“**NEP**”), NextEra Energy Operating Partners, LP (“**NEOP**”), and NextEra Energy Capital Holdings, Inc. (“**NEECH**”), and their respective direct or indirect subsidiaries.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and all Exhibits hereto, and any schedules and written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.6(b).

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff, provided, for avoidance of doubt, the Ancillary Services do not include black start.

“**Automated Dispatches**” has the meaning set forth in Section 4.6(b).

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Adjustment**” has the meaning set forth in Exhibit C.

“**Availability Notice**” has the meaning set forth in Section 4.10(b).

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“**Bankrupt**” or “**Bankruptcy**” 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.

“**Battery Charging Factor**” means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first ten (10) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

“Battery Discharging Factor” means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first eight (8) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

“BESS Equipment” means batteries, battery modules, onboard sensors, control components, inverters, sub-inverters, transformers, or any of their components.

“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.



“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.4(a)(ii).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 16.1(a).

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, metering scheme, 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 Charging Energy and Discharging Energy delivered to or from the Delivery Point.

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Capacity Test” or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to Exhibit O.

“CEQA” means the California Environmental Quality Act, as amended or supplemented from time to time.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which 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 Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless 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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

“Charging Energy” means the Energy delivered to the Facility pursuant to a Charging Notice, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy shall be used solely to charge the Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. [REDACTED]

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Capacity Test” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Commercial Operation Date” or **“COD”** has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Delay Damages” means an amount equal to [REDACTED]

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.7(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.7.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Section 1(a) of Exhibit B.

“Construction Start Date” has the meaning set forth in Section 1(a) of Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet.

“Contract Term” has the meaning set forth in Section 2.1(a).

“Contract Year” means a period of twelve (12) consecutive months; provided, that the first Contract Year shall start on the Commercial Operation Date and end on the date that is twelve (12) months after the Supply Plan Start Date and therefore may be longer than twelve (12) months. Each subsequent Contract Year shall commence on the anniversary of the Supply Plan Start Date.

“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 Non-Defaulting 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 this Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission, or any successor entity performing similar functions.

“CPUC System RA Penalty Price” means the penalty price (in dollars per kW-month) adopted by the CPUC for a load serving entity’s failure to procure up to the system RAR that applies to the RA Shortfall Month.

[REDACTED]

“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 by S&P, Fitch or Moody’s. If ratings by S&P, Fitch and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“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 deliveries of Facility Energy, and/or cease accepting or reduce acceptance of Charging Energy from the CAISO Grid for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Transmission Provider 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 Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“Daily Delay Damages” means an amount equal [REDACTED]

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a termination of this Agreement under Section 11.2 occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

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

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

“Dedicated Interconnection Capacity” means the maximum instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deliverability Deadline” has the meaning set forth in Section 2.3.

“Delivery Point” means the PNode assigned to the Facility by the CAISO.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Section 4 of Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for Electrical Losses to the Delivery Point.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Dispatch Notice” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate, for a specified period of time, and/or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

[REDACTED]

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“Effective Date” has the meaning set forth on the Preamble.

“Effective Flexible Capacity” or **“EFC”** has the meaning set forth in the CAISO Tariff.

“Efficiency Rate” means the tested rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

[REDACTED]

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

“Excused Hour” has the meaning set forth in Exhibit P.

“Facility” means the energy storage 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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Discharging Energy.

“Facility Meter” means a CAISO Approved Meter, along with a CAISO-approved 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 Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Facility Metering Point to the Delivery Point for the purpose of invoicing

in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Facility Metering Point” means the location(s) of the Facility Meter shown in Exhibit R.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Flexible Capacity” has the meaning set forth in the CAISO Tariff.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Force Majeure Event” has the meaning set forth in Section ARTICLE 10.

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Gains” means, with respect to the Non-Defaulting 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 reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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 include the value of Capacity Attributes.

“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*, “Governmental Authority” shall not in any event include any Party.

“Guaranteed Capacity” means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as set forth on the Cover Sheet.

“Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“Guaranteed Construction Start Date” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed RA Amount” means, at any point in time on or after the RA Guarantee date, the maximum Net Qualifying Capacity (in MWs) for which a storage facility with storage capacity of Installed Capacity with eight (8)-hour discharge at the Delivery Point, having achieved FCDS to the extent required under this Agreement and performing with operational characteristics equal to those required by the Guaranteed Seasonal Availability and the Guaranteed Efficiency Rate, and as limited by the Operating Restrictions, may be counted toward meeting the RAR in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

“Guaranteed Seasonal Availability” has the meaning set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has an Investment Grade Credit Rating, [REDACTED] (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer. NEECH is approved as a Guarantor.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

[REDACTED]

“Indemnified Party” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Indemnifying Party” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point (to the extent such Electrical Losses are not already reflected in the Facility Meter measurements), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

“Insurable Force Majeure Event” means any Force Majeure Event that results in direct, physical loss to the Facility, excluding any Force Majeure Event involving any event or circumstance occurring at any point beyond the Delivery Point.

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

“Interconnection Agreement” means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Delivery Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interconnection Point” has the meaning set forth in Exhibit A.

“Interest Rate” has the meaning set forth in Section 8.2.

[REDACTED]

“ITC” means the investment tax credit established pursuant to Section 48, 48E, or other applicable provisions of the United States Internal Revenue Code of 1986.

“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 October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” 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.

“Lender” means, collectively, any Person (a) 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 (including back-leverage debt), equity (including tax 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 or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“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 [REDACTED] in a form substantially similar to the letter of credit set forth in: (a) Exhibit K if issued on behalf of Seller for the benefit of Buyer; [REDACTED]

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority with jurisdiction over Buyer. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means, with respect to the Non-Defaulting 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 reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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 must include the value of Capacity Attributes and Tax Credits.

[REDACTED]

“Master File” has the meaning set forth in the CAISO Tariff.

“Maximum Charging Capacity” means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

“Maximum Discharging Capacity” means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

“Milestones” means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.

“Minimum Efficiency Rate” has the meaning set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.10(a).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“Must Offer Obligations” means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“NEECH” has the meaning set forth in the definition of Affiliate.

“NEOP” has the meaning set forth in the definition of Affiliate.

“NEP” has the meaning set forth in the definition of Affiliate.

“NERC” means the North American Electric Reliability Corporation, or any successor entity performing similar functions.

“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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Notification Deadline” in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“Off-Peak Hour” means any hour that is not an On-Peak Hour.

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“Operating Restrictions” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Outage Schedule” has the meaning set forth in Section 4.12(a)(i).

“Party” has the meaning set forth in the Preamble.

“Party A” has the meaning set forth in Section 8.9.

“Party B” has the meaning set forth in Section 8.9.

“Performance Security” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transfer” means each of the following transactions:

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Financing” means any debt or equity financing incurred or entered into by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs any debt or equity financing obligations in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) Flexible RAR compliance or advisory showings (or

similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“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 3.5(b).

“RA Guarantee Date” means the later of (a) June 1, 2027, or (b) the first day of the first calendar month that is at least two (2) months after the Commercial Operation Date. For illustrative purposes, if the Commercial Operation Date is June 30, the RA Guarantee Date shall be September 1.

“RA Shortfall” has the meaning set forth in Section 3.5(b).

“RA Shortfall Month” means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which an RA Shortfall occurs.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Receiving Party” has the meaning set forth in Section 18.2.

“Remedial Action Plan” has the meaning in Section 2.4.

“Replacement RA” means replacement Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) provided by a resource located within the CAISO Balancing Authority Area.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Capacity” or **“RA Capacity”** has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 22-06-050, 23,04-010 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“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.

“Seasonal Availability” has the meaning set forth in Exhibit P.

“Seasonal Period” means the Summer Season or the Winter Season.

“Security Interest” has the meaning set forth in Section 8.9.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s Indemnified Parties” has the meaning set forth in Section 16.1(b).

“Seller Initiated Test” has the meaning set forth in Section 4.4(a)(iii).

“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). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement itself, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

“Showing Month” shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“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 in the form of Exhibit J to Buyer.

“Site Control” means that, for the Contract Term, Seller or its Affiliate: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“State of Charge” or **“SOC”** means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by eight (8) hours, expressed as a percentage.

“Station Use” means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice. Seller is solely responsible for Station Use.

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

“Summer Season” means the months of May through October, inclusive.

“Subsequent Purchaser” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“Supply Plan Start Date” has the meaning set forth in Exhibit C.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, 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.

“System RAR” means the Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority, but excluding local and flexible Resource Adequacy Requirements. “System RAR” may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

“Tax” or **“Taxes”** 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.

“Tax Credits” means any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Throughput” means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

“Transmission Plan Deliverability” has the meaning set forth in Section 2.3.

“Transmission Provider” means any 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 for the purpose of transmitting or transporting the Discharging Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.

“Unplanned Outage” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

“Winter Season” means the months of November through April, inclusive.

1.2 **Rules of Interpretation.** 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 Article, 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 such document, agreement or 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 terms “include” and “including” mean “include or including (as applicable) 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;

(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

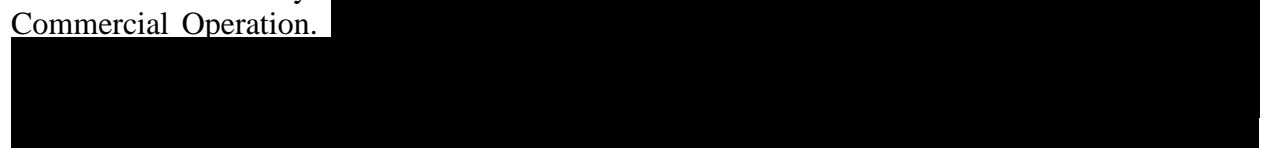
TERM; CONDITIONS PRECEDENT


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**”); *provided*, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(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 Article 18 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 three (3) years following the termination of this Agreement.

2.2 Commercial Operation; Conditions Precedent. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide copies of the documents set forth below to Buyer in a timely manner after receipt and shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation.





(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller or its Affiliate has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) Intentionally omitted;

(d) 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;

(e) Seller has obtained CAISO Certification for the Facility other than for Ancillary Services, which shall not be required to achieve the Commercial Operation Date or the start of the Delivery Term;

(f) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

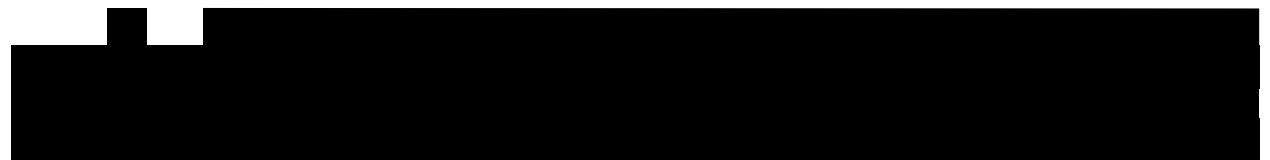
(g) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

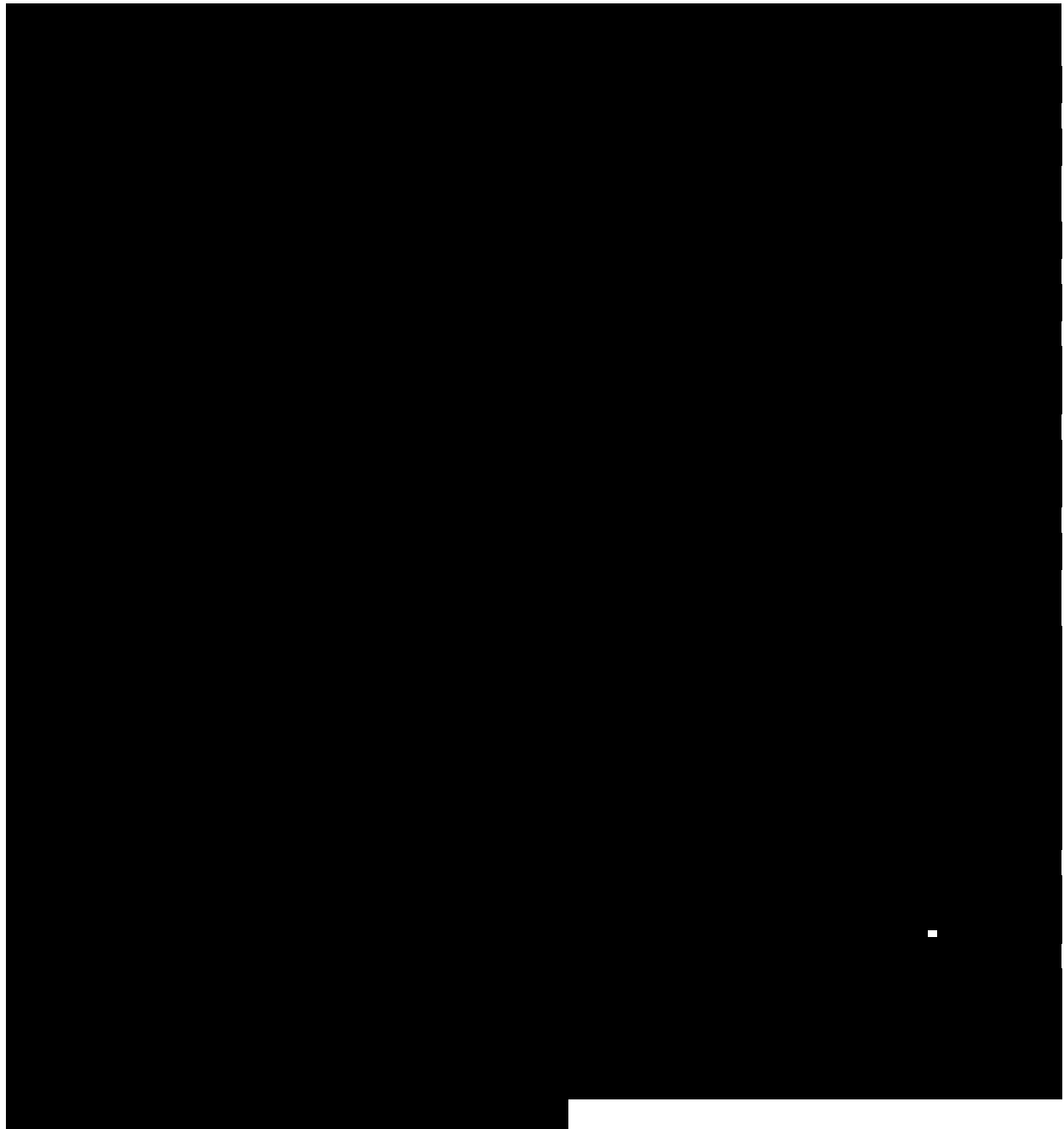
(h) Seller or its Affiliate has Site Control;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8, which may be provided in part by designating the Delivery Security as Performance Security;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

(f) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.





2.4 **Development; Construction; Progress Reports.** 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 Date, Seller shall provide to Buyer a



Progress Report and agrees 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 E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.5 **Remedial Action Plan**. If Seller misses a Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90)-day period following the Milestone completion date, 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), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones, and the potential impact of the missed Milestones on achievement of the Commercial Operation Date in relation to the Guaranteed Commercial Operation Date. Delivery of a Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones (when required under this Section 2.5), and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.6 **Pre-Commercial Operation Actions**. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

3.1 **Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to and shall purchase the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any

portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

3.2 **Discharging Energy.** Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes.** Subject to Section 2.3, Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed Capacity in the CAISO affidavit 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.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Subject to Section 2.3, throughout the Delivery Term and subject to Section 3.7, Seller shall maintain Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.7, Seller shall take commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement. Seller shall promptly comply with all reasonable requests for information from the CPUC and all reasonable requests for information from Buyer necessary to demonstrate Buyer's compliance with its RAR obligations with respect to the Facility.

3.4 **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity, adjusted to reflect the Effective Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the sole and exclusive remedy for the RA Shortfall Month and the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Guaranteed RA Amount for such Showing Month, minus (ii) the lowest amount of Net Qualifying Capacity included on the Supply Plan as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month (such difference, the “**RA Shortfall**”), multiplied by

provided, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M to Buyer at least ten (10) Business Days before the deadline (as established by CAISO or any other Governmental Authority) that Buyer must meet to submit its Resource Adequacy Plan for the applicable Showing Month for the purpose of monthly RA reporting.

3.6 **Buyer’s Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller’s obligations hereunder. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller’s obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at (“**Compliance Expenditure Cap**”).

(a) 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**.”

(b) 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.

(c) 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 or some portion 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 3.7 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.

(d) 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 documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 **Interconnection**. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less (and no greater) than the Dedicated Interconnection Capacity throughout the Delivery Term.

4.3 Seasonal Availability and Efficiency

(a) During the Delivery Term, the Facility shall maintain a Seasonal Availability during each Seasonal Period of no less than the Guaranteed Seasonal Availability, which Seasonal Availability shall be calculated in accordance with Exhibit P. If the Seasonal Availability during any Seasonal Period is less than the applicable Guaranteed Seasonal Availability for such Seasonal Period, then Seller shall owe liquidated damages pursuant to Exhibit C, which, except as set forth in Section 11.1(b)(iii) and (iv), shall be Buyer's sole and exclusive remedy in respect of Seller's failure to achieve the Guaranteed Seasonal Availability.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than the applicable Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with a Capacity Test conducted pursuant to Exhibit O. If the Efficiency Rate during any month is less than the applicable Guaranteed Efficiency Rate, then Seller shall owe liquidated damages pursuant to Exhibit C, which, except as set forth in Section 11.1(b)(v), shall be Buyer's sole and exclusive remedy in respect of Seller's failure to maintain the applicable Guaranteed Efficiency Rate.

4.4 Facility Testing

(a) Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Capacity Test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

(ii) Any testing of the Facility requested by Buyer, and all required annual tests pursuant to Section B of the section headed "Capacity Test Notice and Frequency" in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). For any Buyer Dispatched Test, Buyer shall (1) pay for and be responsible for providing all associated Charging Energy, (2) be liable for all CAISO costs and charged for associated Charging Energy, and (3) be entitled to any CAISO revenues associated with associated Discharging Energy.

(iii) For any Capacity Tests, or other operational tests initiated by Seller ("**Seller Initiated Test**"), including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Storage Capacity immediately prior to such Capacity Test is below [REDACTED] of the Installed

Storage Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall be (A) liable for all CAISO costs and charges for associated Charging Energy, and (B) entitled to any CAISO revenues associated with Discharging Energy.

(iv) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test. Charging Notices or Discharging Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any hour or partial hour when a Buyer Dispatched Test occurs shall be deemed an Excused Hour for the purposes of calculating the Seasonal Availability.

(v) For any Seller Initiated Test, other than Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than [REDACTED] prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(vi) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

(b) Additional Testing. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Seasonal Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point, or during any Excused Hour.

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to compliance with the Operating Restrictions, each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Buyer Initiated Test or a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the CAISO, Transmission Provider, or any Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.

(d) **Discharging Notices.** Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

(e) **No Unauthorized Discharging.** Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility

maintenance or a Storage Capacity Test), or pursuant to a notice from the CAISO, Transmission Provider, or any Governmental Authority.

(f) Unauthorized Discharges. If, during the Contract Term, Seller (i) discharges the Facility other than as provided for in the Discharging Notice or (ii) discharges the Facility in violation of Section 4.5(e), then (i) Seller shall be responsible for two (2) times the amount of all Energy costs associated with, and shall hold Buyer harmless from, and reimburse Buyer for two (2) times the amount of all actual losses and costs that Buyer incurs as a result of, such discharging of the Facility, and (ii) Buyer shall be entitled to all of the benefits (including Product) associated with such discharge.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

(h) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii)) is

supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.10 **Capacity Availability Notice.**

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("**Monthly Forecast**").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change one (1) MW or more after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **Facility Rebalancing Dispatch.** Seller shall have the right to charge and discharge the Facility during Off-Peak Hours to rebalance the levels of stored energy in the Facility as Seller deems necessary ("Facility Rebalancing Dispatch"); provided that: (i) Seller shall provide at least seventy-five (75) minutes prior notice to Buyer for any Facility Rebalancing Dispatch; (ii) Seller shall restore the Facility at the end of any Facility Rebalancing Dispatch to the level of stored energy (but rebalanced among inverters) as existed prior to the Facility Rebalancing Dispatch; and (iii) [REDACTED] each as a result of any such Facility Rebalancing Dispatch.

4.12 **Outages**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall limit Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the

timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) No Planned Outages During Summer Months. Except as scheduled by the Parties under Section 4.12(a)(ii), during the Summer Season of each Contract Year, Seller shall not schedule any non-emergency outage or maintenance that reduces the Available Capacity of the Facility, unless (i) such outage or maintenance is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such outage or maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the Summer Season of each Contract Year, (iii) such outage or maintenance occurs in connection with any Force Majeure Event, (iv) such outage or maintenance is required by Law or by the CAISO Tariff or the tariffs of the Transmission Provider, or (v) the Parties agree to such outage or maintenance in writing.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall 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 (if such periods are available), and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) Notice of Unplanned Outages Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) Inspection. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day reasonably convenient for Seller and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5 TAXES, GOVERNMENTAL COSTS

5.1 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 its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). 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 after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) or on Charging Energy prior to its delivery to Seller. 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.

5.2 Cooperation. 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*, 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 Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the sale of Product, and the disposal or recycling of any equipment associated with the Facility, including batteries.

6.2 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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's

Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in the amount of the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (iii) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility in an amount that is higher than Buyer's pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter(s) will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days prior to the Commercial Operation Date, as may also be revised to be consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan. In the event 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 directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan.

7.2 **Meter Verification**. Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction.

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 Facility Meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than [REDACTED] and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8

INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product 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 (including, in real time, to the maximum extent reasonably possible) 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. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments 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 of Buyer's receipt of Seller's invoices; *provided*, 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 [REDACTED] (the "**Interest Rate**"). 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 **Books and Records.** 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. Upon fifteen (15) days' Notice to the other Party, either 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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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 or 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 Facility 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.

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 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 via adjustments in accordance with Section 8.4. 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 third party not affiliated with any Party and such third party corrects its information after the twelve-month 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 with respect to this Agreement 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 or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, 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.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall (a) deliver the Development Security to Buyer in an amount equal to the amount set forth for the Development Security on the Cover Sheet within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required

to return such Development Security hereunder. Upon the earlier of (a) Seller's delivery of the Performance Security (unless Seller elects to use the Development Security to meet a portion of the Performance Security), or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security. Notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may elect to apply the Development Security toward the Performance Security. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon 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 other than to satisfy a Termination Payment (provided, however, that the total amount of any replenishments shall not exceed two (2) times the amount of the original Performance Security), until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable 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 both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. For avoidance of doubt, the limit on Seller's obligation to replenish the Performance Security shall not be construed as a cap on Seller's liabilities under this Agreement.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, each Party ("**Party A**") hereby grants to the other Party ("**Party B**") a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of, as applicable, the Development Security, Performance Security, [REDACTED] to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Sections 0, 8.8, [REDACTED] 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 Party B, and Party A agrees to take all action as Party B reasonably requires in order

to perfect Party B'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 and continuation of an Event of Default caused by Party A, an Early Termination Date resulting from an Event of Default caused by Party A, or an occasion provided for in this Agreement where Party B is authorized to retain all or a portion of the Development Security, Performance Security, [REDACTED]

(a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, [REDACTED] as applicable, 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 Party B as Development Security, Performance Security, [REDACTED] and [REDACTED]

(c) Liquidate all Development Security, Performance Security, [REDACTED] [REDACTED] then held by or for the benefit of Party B free from any claim or right of any nature whatsoever of Party A, including any equity or right of purchase or redemption by Party A.

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

8.10 **Provision of Financial Statements.**

(a) From the Effective Date, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred eighty (180) days after the end of each fiscal year; *provided, however*, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor's ultimate parent (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, and if applicable, as posted on the website of the Guarantor's ultimate parent or the Securities Exchange Commission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** 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 in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **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 next Business Day 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 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 next Business Day delivery carrier, 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, invoices sent pursuant to Section 8.1 and 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) **“Force Majeure Event”** 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; hail; explosion; fire; volcanic eruption; flood; epidemic or pandemic (including COVID-19) and any quarantine related to any such epidemic or pandemic); 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.

(c) 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 the Product at a lower price, or Seller’s ability to sell Product 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 Order, except to the extent such Curtailment Order 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 or the Shared Facilities 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, or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event.

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. 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. The obligation to use due speed and diligence shall

not be interpreted to require 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. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, *provided* the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment as liquidated damages upon exercise of Buyer's default rights pursuant to Section 11.2 (provided that promptly upon Buyer's receipt of the Damage Payment, Buyer shall return to Seller the Development Security to the extent it did not comprise (i.e., was not used as) the Damage Payment), or (d) limit Buyer's right to terminate the Agreement with respect to the Facility pursuant to Section 2 and/or Section 4 of Exhibit B and receive the Damage Payment as liquidated damages, provided that promptly upon Buyer's receipt of the Damage Payment, Buyer shall return to Seller the Development Security to the extent it did not comprise (i.e., was not used as) the Damage Payment.

10.3 **Notice.** Within two (2) weeks of becoming aware of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely written Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim as to all periods prior to the delivery of a Notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

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

(a) with respect to a Party (the "**Defaulting Party**") 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 ten (10) 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 deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Seasonal Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, 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 fails 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.

(vii) failure by such Party to satisfy the collateral requirements pursuant to Section 0, Section 8.8, [REDACTED]

(viii) with respect to any outstanding Letter of Credit provided for the benefit of the other Party that is not then required under this Agreement to be canceled or returned, the failure by such Party to provide for the benefit of such other Party either cash or a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or, in the case of the Performance Security required to be provided by Seller, a Guarantor meeting the requirements of this Agreement, in each case, in the amount required hereunder within ten (10) Business Days after such Party receives Notice 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 Fitch 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) such Party 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.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the

following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point that was not discharged by the Facility;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) If, during any four consecutive Seasonal Periods of the Delivery Term, the simple average of the Seasonal Availability (calculated in accordance with Exhibit P but including all Force Majeure Events as available hours) for such Seasonal Periods is not at least [REDACTED] and Seller fails to: (x) deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time ("Cure Plan") not to exceed one hundred eighty (180) days; [REDACTED]

[REDACTED]

[REDACTED] If, during any two consecutive Seasonal Periods of the Delivery Term, the simple average of the Seasonal Availability (calculated in accordance with Exhibit P but including all Force Majeure Events as available hours) for such Seasonal Periods is not at least [REDACTED] and Seller fails to: (x) deliver to Buyer within thirty (30) days after Notice from Buyer a Cure Plan to cure such failure within one hundred eighty (180) days; [REDACTED]

[REDACTED]

(v) if, Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period, [REDACTED]

[REDACTED]

(vi) if, Seller fails to maintain an Effective Capacity equal to at least [REDACTED] of the Installed Capacity for more than three-hundred and sixty five (365) consecutive days, [REDACTED]

[REDACTED]

(vii) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, 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 the 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 Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the 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; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) 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 and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(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*, 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 monetary remedy for any early termination of this Agreement under this Section 11.2 and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be



There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the Settlement Amount plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include 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. Without prejudice to Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a termination of this Agreement under Section 11.2 occurring after the Commercial Operation Date ("**Termination Payment**") shall be the Settlement Amount plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of

Gains or Losses may include 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. 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 (i) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement under Section 11.2 would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a termination of this Agreement under Section 11.2 and the associated Event of Default.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Seller Pre-COD Liability Limitations. Notwithstanding anything to the contrary in this Agreement, Seller's total liability prior to the Commercial Operation Date (excluding any Commercial Operation Delay Damages) shall not exceed [REDACTED].

11.7 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If this Agreement is terminated by either Party prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of [REDACTED] following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement [REDACTED] but with an adjusted schedule, and Buyer fails to accept such offer within forty-five (45) days of

Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) each for the avoidance of doubt as and to the extent applicable to the Facility, so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.7.

11.8 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.9 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts 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 **No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, 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 CREDITS, 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 TAX BENEFITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5(b), 4.3, 4.9(c), 4.9(f), 11.2, 11.3 AND 11.6, AND AS PROVIDED IN EXHIBIT B, and EXHIBIT C, 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. 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.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; COVENANTS

13.1 **Seller's Representations and Warranties.** 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 jurisdiction of its formation and is or will be 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) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays.

13.2 Buyer's Representations and Warranties. 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 CPUC, and is qualified to conduct business in its jurisdiction. 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 cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

(g) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** 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 in material compliance with any Law.

13.4 **Seller's Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) **Compliance with Laws.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.

(b) Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

(c) Seller or its Affiliate shall maintain Site Control throughout the Delivery Term.



13.6 **Supplier Diversity.** Seller acknowledges that Buyer will request voluntary disclosure of Seller's certification status with the CPUC Clearinghouse, and voluntary disclosure regarding Seller's efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises.

13.7 **Community Benefits.** Seller pledges to contribute two hundred fifty thousand dollars (\$250,000) for community benefits initiatives that directly benefit stakeholders in Buyer's service area and/or communities adjacent to the Site. Buyer and Seller shall identify initiatives that are of mutual interest such as housing, education, workforce training, environmental stewardship, and habitat improvement. Seller shall make this payment within sixty (60) days after the Commercial Operation Date.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, except as specified in Section 14.3. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including reasonable attorneys' fees. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement provided in Section 14.2, to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement; *provided, however*, Buyer will have no obligation to provide any consent, or enter into any

agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as provided in this Article 14.

14.2 **Collateral Assignment; Financing Cooperation**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"), which shall be substantially in the form of Exhibit T and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit U ("**Estoppel Certificate**"). Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify this Agreement.

14.3 **Permitted Assignments**. Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party in accordance with Section 14.2; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, Buyer's consent shall not be required if (i) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP, or (ii) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

14.4 **Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Permitted Assignment by Buyer.** If a change in Law occurs after the Effective Date that allows a tax-exempt load serving entity, including Buyer, to include product purchased under an energy storage agreement with a standalone storage facility, including Product purchased under this Agreement, in a municipal prepayment transaction, then subject to the terms and conditions of this Agreement, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity (“**Limited Assignee**”) that has an Investment Grade Credit Rating of Buyer’s right to receive certain Product (which shall not be for retail sale, and which shall not include any right to issue Charging Notices or Dispatch Notices or to dispatch the Facility or any portion of the Product, or any right or obligation to act as the Scheduling Coordinator for the Facility or to offer any portion of the Product into the CAISO markets) and Buyer’s obligation to make payments for such Product to the Seller (subject to the foregoing exclusions, “**Assigned Product**”). The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under the Agreement or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement, and shall be expressly subject to the Limited Assignee’s timely payment of amounts due under this Agreement with respect to the Assigned Product. Buyer shall pay Seller for any payments not timely made by Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payment for all amounts due and owing under this Agreement, including the total gross amount due to Seller under each invoice. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified in this Agreement. Subject to the foregoing, Buyer may make such an assignment upon not less than thirty (30) days’ advance written notice by delivering to Seller a written request for Seller’s consent to such assignment and the proposed form of limited assignment agreement in form and substance acceptable to Seller and its Lenders (if any), including that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or its Lenders. Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to such limited assignment, or (2) Seller’s performance of any obligation under the assignment agreement, fails to meet any requirements of this Agreement, then Seller shall not be deemed to be in breach of any obligation in this Agreement, including without limitation any representation or warranty herein. Buyer shall reimburse Seller for its out-of-pocket costs and expenses, including reasonable attorneys’ fees in excess of \$5,000, incurred in connection with any such assignment, or requested assignment, including in connection with obtaining required consents from its Lenders. Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any Lender in connection with such limited assignment, including providing any requested acknowledgments with respect to any Collateral Assignment Agreement.

ARTICLE 15

DISPUTE RESOLUTION

15.1 **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 suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.

15.2 **Judicial Reference.** Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be a retired judge and shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

15.4 **Attorneys' Fees.** 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 16 INDEMNIFICATION

16.1 Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement ("**Indemnifiable Losses**").

(b) Nothing in this Section 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 obligations to pay claims

consistent with the provisions of a valid insurance policy.

16.2 **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 an indemnity provided for in this Article 16 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 the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, 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.

16.3 **Defense and Settlement.** 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*, 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 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, 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 17 INSURANCE

17.1 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 [REDACTED] occurrence, and an annual aggregate of not less than [REDACTED] 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 [REDACTED]. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** 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 California Law

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] 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) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, until the Commercial Operation 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) Intentionally omitted.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (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 with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section ARTICLE 17(g).

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations.

(i) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. 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. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller

including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” 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 after the time of the delivery; (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.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. For the avoidance of doubt, the Parties acknowledge and agree that to the extent that the information contained in Exhibit A is not Confidential Information. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend

any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** 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 19 MISCELLANEOUS

19.1 **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.

19.2 **Amendments.** Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** 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) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** 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.

19.6 **Mobile-Sierra.** 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 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** 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.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. As set forth in this Agreement, Buyer shall solely

be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.11 Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366.

(a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and at least one of the Parties is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Performance Security to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or offset under a forward contract within the meaning of §§556, 561 of the Bankruptcy Code.

(b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.

(c) Each Party acknowledge and agrees that, for all purposes of this Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or any other provision of 11 U.S.C. § 101-1532.

19.12 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. 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 15. 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, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances**. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**DESERT SANDS ENERGY STORAGE II, SAN DIEGO COMMUNITY POWER
LLC**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Desert Sands (for clarification, the Facility will comprise only a portion of the entire Desert Sands Energy Complex)

Site includes all or some of the following APNs: 668280017, 668280007, 668270016, 668270018, 668270019*

County: Riverside, CA

Zip Code: 92258

Latitude and Longitude: 33.9238, -116.5786

Facility Description: A standalone battery energy storage facility located in the City of Palm Springs within Riverside County, California. The Facility is a portion of a larger complex . Seller may install additional inverter capacity to account for production and delivery losses.

Interconnection Point:

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: To be established prior to the Commercial Operation Date at the Devers 220 kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Southern California Edison

Additional Information: None.

* The APNs identified above are sufficient for Seller to build the Facility. Seller may add additional APNs without the consent of Buyer.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

(a) “**Construction Start**” will occur upon Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees that includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.

(b) In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by electing to pay Daily Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Daily Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. For the avoidance of doubt, Seller has no obligation to pay any Daily Delay Damages in connection with any failure or delay in achieving the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. If Seller achieves Commercial Operation [REDACTED] (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”). The “**Commercial Operation Date**” shall be the later of (x) sixty (60) days prior to the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

(a) Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s election to pay Commercial Operation Delay Damages pursuant to Section 2(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B. Seller shall notify Buyer at least sixty (60) days

before the anticipated Commercial Operation Date. For the avoidance of doubt, Seller has no obligation to pay any Commercial Operation Delay Damages in connection with any failure or delay in achieving the Guaranteed Commercial Operation Date.

(b) In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] days of extensions by such payment of Commercial Operation Delay Damages; provided, however, that Seller may apply any unrefunded Daily Delay Damages paid by Seller toward the payment of any Commercial Operation Delay Damages, and shall pay the remainder owed after such credit is applied. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages (less any amounts credited for payment of unrefunded Daily Delay Damages) for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages (including through crediting of unrefunded Daily Delay Damages), Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.

3. **Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation**. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

- (a) a delay caused by one or more Force Majeure Events, not to exceed [REDACTED];
- (b) the Interconnection Facilities or Network Upgrades are not complete and ready at least four (4) months prior to the Guaranteed Commercial Operation Date (as in effect before an extension under this Section 4(b)) to enable the Facility to sell Product at the Delivery Point by such Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller, not to exceed [REDACTED]

- (c) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date; or
- (d) a delay or extension associated with any New BESS Trade Measure Event or Import Restriction Action, not to exceed [REDACTED]

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(c) above, which shall not have a limit as applied to Seller) shall not exceed [REDACTED] for any reason. Notwithstanding anything to the contrary herein, no extension shall be given under a Development Cure Period if, and to the extent that (A) the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, (B) Seller failed to provide requested documentation as provided below, or (C) Seller failed to provide written notice to Buyer as required for a Force Majeure Event (provided for clarification purposes, if the Force Majeure Event written notice is provided but not timely under Section 10.3, Seller shall be entitled to a Development Cure Period extension but reduced by the number of days that such notice is late), if applicable, or as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.


5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is up to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to achieve an Installed Capacity that is 100% of the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity, Performance Security, and other applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Monthly Capacity Payment. For each month of the Delivery Term commencing with the first day of the first month for which the Project is included on a Supply Plan (“Supply Plan Start Date”), Buyer shall pay Seller a Monthly Capacity Payment equal to the product of (i) the Contract Price (in dollars per kW-month), multiplied by (ii) one thousand (1,000), multiplied by (iii) the Effective Capacity (in MW). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity is applicable.



(b) Availability Adjustment Liquidated Damages. If the Seasonal Availability during any Seasonal Period of the Delivery Term is less than the applicable Guaranteed Seasonal Availability, then Seller shall include a credit on the invoice to Buyer for liquidated damages in an amount equal to the product of (i) the aggregate Monthly Capacity Payments for such Seasonal Period, and (ii) one hundred percent (100%) minus the applicable Availability Adjustment (in %) calculated for such Seasonal Period pursuant to Exhibit P; provided, that for the avoidance of doubt, if such applicable Availability Adjustment is 100%, then Seller shall not owe any liquidated damages or other credit or payment to Buyer for such Seasonal Period.

(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate(s) applicable to such month is/are less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate(s) is/are less than the Guaranteed Efficiency Rate, *by* (iii) Buyer’s average cost of procuring Charging Energy for such month, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Buyer 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 (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility, 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. Seller shall not authorize or designate any other party to act as the Facility'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 the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility'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, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility'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 outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall 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 transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, 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 Delivery Point and Charging Energy delivered to the Delivery Point; *provided, however*, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in 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), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account (except to the extent such Non-Availability Charges arise out of Buyer's failure

to perform its duties as Scheduling Coordinator for the Facility). 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 failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility'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 payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. 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 shall review, validate, and if requested by Seller under paragraph (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 thirty (30) 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 such 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 in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) shall if requested by Seller 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, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator for the Facility.

(f) Terminating Buyer's Designation as Scheduling Coordinator. 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) Master Data File and Resource Data Template. 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 the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. 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.

EXHIBIT E
PROGRESS REPORTING FORM

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. Gantt chart 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. [Prevailing wage reports as required by Law.]
12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. 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.
14. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Comments
	(MW)			
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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.

As of _____[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____[DATE]_____.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
7. The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: _____
Its: _____
Date: _____

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (“**Certification**”) of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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.

I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW AC to the Delivery Point at eight (8) hours of continuous discharge, and (ii) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit Q.

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 of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the _____ previously identified Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement.)

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____
Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

San Diego Community Power Authority
PO Box 12716
San Diego, CA 92112

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of San Diego Community Power, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement 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, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the

Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration 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 Articles 14(b) and 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 Expiration 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. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[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 San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, 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 _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Services Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

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 Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of San Diego Community Power 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 San Diego Community Power by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power

Name and Title of Authorized Representative

Date_____

gc

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “**ESSA**”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESSA, as required by Section 8.8 of the ESSA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, (the “**Obligations**”), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA ; provided, that the Guarantor’s aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed _____ Dollars (\$_____) (the “**Guaranteed Amount**”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure

(the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA, or (z) the [_____] anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the ESSA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or

unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to [____], a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
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	
Delivery Period	

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

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

Desert Sands Energy Storage II, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: (561) 691-2816 Email: dl-bmo-west- caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com	All Notices: PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: [REDACTED]	Reference Numbers: [REDACTED]
Invoices: Attn: Business Management, Aileen Yeung Phone: (561) 691-2816 Email: dl-bmo-west- caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: TBD Attn: Phone: Email:	Scheduling: Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: TBD Attn: Phone: Email:	Confirmations: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Business Management, Aileen Yeung Phone: (561) 691-2816 Email: dl-bmo-west- caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com	Payments: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@maher CPA.com

Desert Sands Energy Storage II, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]
With additional Notices of an Event of Default to: Attn: Business Management Phone: (561) 691-2816 Facsimile: Email: dl-bmo-west-caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com	With additional Notices of an Event of Default to: Best, Best & Krieger Attn: Ryan Barron, General Counsel 655 West Broadway, 15th Floor San Diego, CA 92101 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com
Emergency Contact: TBD Attn: Phone: Email:	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data

with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
 - (1) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed ten (10) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time;
 - (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
 - (4) Stored Energy Level (MWh).
- C. Intentionally Omitted.
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for ten (10) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this value may be effectively instantaneous and unmeasurable with precision);
 - (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.
- E. Test Conditions.
- (1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.
 - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
 - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters

shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to conducting the initial Commercial Operation Capacity Test, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to,

but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

- (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following one (1) hour rest period, or other period recommended by the battery manufacturer, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test)

for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.

- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

- Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Section III.A(8) above at the Facility Meter divided by eight (8) hours.
- (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 19.7 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. **Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 19.7 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

SEASONAL AVAILABILITY CALCULATION

Following the end of each Seasonal Period during the Delivery Term, Seller will calculate the “Seasonal Availability” for such Seasonal Period using the formula set forth below:

$$\text{Seasonal Availability (\%)} = \frac{[\text{SPDHRS}_s - \text{UNAVAILHRS}_s]}{[\text{SPDHRS}_s]}$$

Where:

s = relevant Seasonal Period “ s ” in which Seasonal Availability is calculated;

SPDHRS_s is the total number of hours for the Seasonal Period; *provided*, for the first and last Seasonal Period, only hours that are part of the Delivery Term are included;

UNAVAILHRS_s is the total number of hours, or partial hours, during which the Facility was unavailable to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services (provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed excused, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, [REDACTED]

[REDACTED] for any reason other than the occurrence of any of the following (any hour or partial hour when any one or more of the following occurs is an “Excused Hour”): Force Majeure Event (excluding any Insurable Force Majeure Event; *provided, however*, that Insurable Force Majeure Events shall not be excluded (*i.e.*, all Force Majeure Events shall be included) in determining Seasonal Availability for purposes of any Event of Default under this Agreement); curtailments, including Curtailment Orders; Event of Default of Buyer; Buyer Initiated Test; System Emergency; Transmission System Outage; Planned Outage up to [REDACTED] hours per Contract Year; unavailability due to compliance with any Operating Restriction; or excused unavailability under Section 4.8. For the avoidance of doubt, hours and partial hours of unavailability that are Excused Hours will not be included in UNAVAILHRS_s for any Seasonal Period. Any event that results in unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour for this calculation. Additionally, if during any hour the Facility is available, but for less than the full amount of the then applicable Contract Capacity, the UNAVAILHRS_s for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for

that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

- A. If the Seasonal Availability is greater than or equal to the applicable Seasonal Availability Guarantee, then:

$$AA = \text{One hundred percent (100\%)}$$

- B. If the Seasonal Availability is less than the applicable Guaranteed Seasonal Availability, but greater than or equal to [REDACTED], then:

$$AA = \text{One hundred percent (100\%)} - [(\text{applicable Guaranteed Seasonal Availability} - \text{Seasonal Availability}) \times \text{[REDACTED]}]$$

- C. If the Seasonal Availability is less than [REDACTED], but greater than or equal to [REDACTED] then:

$$AA = \text{One hundred percent (100\%)} - \frac{(\text{[REDACTED]} - \text{[REDACTED]})}{\text{[REDACTED]}}$$

- D. If the Seasonal Availability is less than [REDACTED], then:

$$AA = \text{zero (0)}$$

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]
Technology:	Lithium Ion Batteries
A. Contract Capacity	
Guaranteed Capacity (MW):	60
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV)	220
Maximum Stored Energy Level (MWh):	480
Minimum Stored Energy Level (MWh):	0
Maximum Charging Capacity (MW):	60
Maximum Discharging Capacity (MW):	60
C. Maximum Throughput	
Maximum annual average State of Charge (SOC):	
Maximum Annual Throughput (discharged MWh/yr):	
D. Charge and Discharge Rates	
Ramp Rate (charge/discharge MW/min)	120
E. Ancillary Services	
Spinning reserve is included:	Yes
Non-spinning reserve is included:	Yes
Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	
Voltage support is included:	Yes

EXHIBIT R

METERING DIAGRAM

To be provided to Buyer at least sixty (60) days prior to the Commercial Operation Date.

EXHIBIT S

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] _____

[REDACTED] _____

[REDACTED] _____

EXHIBIT T

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT
([NAME OF CONTRACTING PARTY])
([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the “Contracting Party”), [_____] a [_____] (the “Project Owner”), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [_____] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT. THE CONTRACTING PARTY HEREBY ACKNOWLEDGES AND CONSENTS TO THE PLEDGE AND ASSIGNMENT OF ALL RIGHT, TITLE AND INTEREST OF THE PROJECT OWNER IN, TO AND UNDER (BUT NOT ITS OBLIGATIONS, LIABILITIES OR DUTIES WITH RESPECT TO) THE ASSIGNED AGREEMENT BY THE PROJECT OWNER TO THE COLLATERAL AGENT PURSUANT TO THE SECURITY AGREEMENT.

2. REPRESENTATIONS AND WARRANTIES. THE CONTRACTING PARTY REPRESENTS AND WARRANTS AS FOLLOWS:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, the Contracting Party has no knowledge of any event or condition (a "Termination Event") that would entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)]² or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section 11.1(b)(iii), (iv) (v) or (vi) of the Assigned Agreement)]³ and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of fifteen (15)⁴ days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”) the Collateral Agent shall have such longer period as is required to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT’S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT’S

² Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

³ Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

⁴ Or longer cure period specified in Assigned Agreement.

DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE DESIGNEE, PURCHASER OR ASSIGNEE OF COLLATERAL AGENT WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING

PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.

8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]

9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, OR (B) SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]]

The Project Owner:

The Contracting Party:

10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.

11. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.

12. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Assigned Agreement

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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SAN DIEGO COMMUNITY POWER Staff Report – Item 20

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC

Date: October 26, 2023

RECOMMENDATION

Adopt the proposed Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration are integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026. Further, as adopted March 23, 2023, SDCP has established a procurement target of 100% renewable by 2035.

The proposed PPA is for capacity and renewable energy benefits from 150 MW of the approximately 3,500 MW wind project under development (the “SunZia Wind project”)

with SunZia Wind PowerCo LLC, a subsidiary of Pattern Energy (“Pattern”). The PPA originated from an offer SDCP received in response to its 2022 Long-Term California RPS-Eligible Renewable Energy Request for Proposals (RFP). SDCP engaged with Pattern after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff negotiated the attached PPA for the purchase of renewable energy and resource adequacy from 150 MW of the SunZia Wind Project, which is an approximately 3,500 MW wind project to be developed in Lincoln, Torrance and San Miguel counties of New Mexico.

As previously reviewed with the Ad Hoc Energy Contracts Working Group (ECWG), the contract offers competitive energy and capacity prices from wind assets and provides desired technology diversity for SDCP’s growing portfolio. Wind generation is expected to be generally complementary to solar photovoltaic generation, both on a daily and seasonal timeframe (Figure 1).

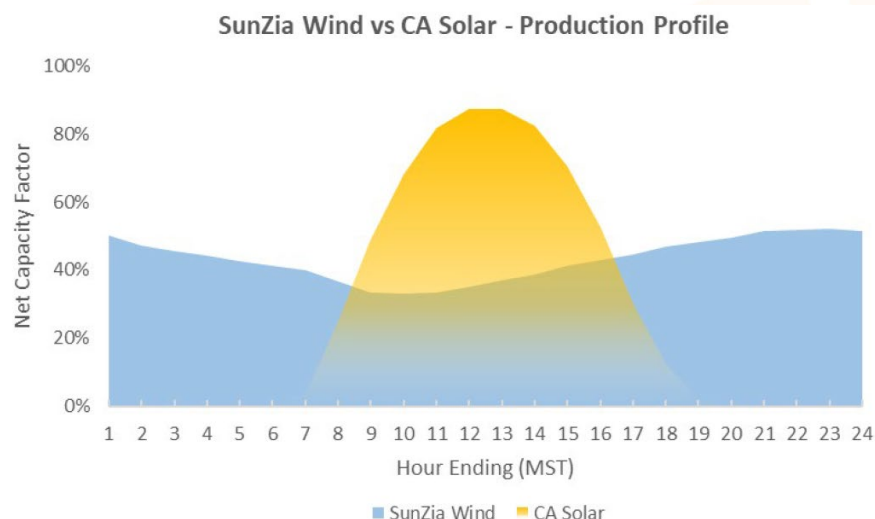


Figure 1. Illustrated SunZia daily wind profile compared to solar profiles (Source: Pattern SDCP RFO project narrative)

Renewable energy produced by the facility will provide approximately 473,000 MWh annually of long-term renewable energy deliveries for SDCP’s power supply. Further, while SDCP is increasing efforts to target and encourage local project development for SDCP’s generation portfolio, SDCP expects a certain amount of geographic diversity among its power supply to help mitigate risks that might be experienced locally or regionally from weather, project site and/or wholesale market conditions.

Below is additional information regarding Pattern Energy and the draft PPA.

Background on Pattern:



- Pattern has 14 years of experience in renewable energy development
- Pattern operates 367 MW in wind generation projects in California.
- Pattern has placed more than 6,000 MW of wind and solar projects into service worldwide.

Contract Overview – SunZia Wind PowerCo LLC

- Project: 150 MW of approximately 3,500 MW from the SunZia Wind project
- Project location: Lincoln, Torrance and San Miguel counties, New Mexico
- Guaranteed commercial operation date: September 30, 2026
- Contract term: 15 years
- Expected annual energy production: approximately 473,000 MWhs
- Guaranteed energy production: 150% of projected annual deliveries over 2-year periods
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet the guaranteed energy production.

Community Benefits and Workforce Development:

- The 3,500 MW SunZia Wind project is estimated to create approximately 2,000 construction jobs.
- Pattern provides \$50,000 annually to the Corona Landowners Association which provides scholarships to local students.
- Pattern supports the Region 9 Educational Cooperative through a grant match to support youth vocational education on a mobile wind and solar technical training program. Region 9 has built a mobile training lab that is pulled from school to school to begin teaching the basics of this fast-growing industry.
- Pattern is a Gale Force (highest tier) sponsor of KidWind which is an organization that provides training, curriculum, and educational kits to schools and teachers to educate their students about wind energy.
- SunZia Wind has received letters of support from IBEW International President, Kenneth Cooper (attachment B) and from the New Mexico Building Construction & Trades Council (attachment C).

COMMITTEE REVIEW

The ECWG approved the shortlisting of the SunZia Wind project on April 5, 2023. On September 5, 2023 the ECWG approved key PPA terms to move forward with the execution of this PPA.

FISCAL IMPACT



The competitive energy and capacity pricing of the PPA are confidential, but the long-term purchase of renewable energy and capacity will provide SDCP with significant value and cost certainty over the term of this PPA.

ATTACHMENTS

Attachment A: Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC

Attachment B: Letter of support from IBEW

Attachment C: Letter of support from the New Mexico Building Construction & Trades Council



RENEWABLE POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: SunZia Wind PowerCo LLC

Buyer: San Diego Community Power, a California Joint Powers Authority

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of up to 3,515 MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Date for Completion
Expected Commercial Operation Date	3/31/2026

Delivery Term: Fifteen (15) Contract Years.

Guaranteed Capacity: 150 MW.

Expected Energy: per Contract Year, as such amount may be adjusted by Seller in accordance with the definition of “Expected Energy” below.

Product:

☒ Delivered Energy

¹ Note: Seller has an executed Interconnection Agreement with SunZia Transmission that was filed at FERC on March 27, 2023. SunZia Transmission has an executed Interconnection Agreement with the joint owners of the Pinal Central Substation, and an amendment to this Interconnection Agreement was executed and filed at FERC on March 24, 2023.

- ☒ Green Attributes/Renewable Energy Credits (Portfolio Content Category 1)
- ☒ Capacity Attributes

Scheduling Coordinator: Seller/Seller Third Party.

Development Security & Performance Security

Development Security: [REDACTED]

Performance Security: [REDACTED]

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Exhibits

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Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Progress Reporting Form
Exhibit D	Form of Average Forecast of Energy (MWh)
Exhibit E	Energy Replacement Damages Calculation
Exhibit F	Form of Commercial Operation Date Certificate
Exhibit G	Form of Installed Capacity Certificate
Exhibit H	Form of Construction Start Date Certificate
Exhibit I	Form of Letter of Credit
Exhibit J	Form of Guaranty
Exhibit K	Notices
Exhibit L	Operating Restrictions
Exhibit M	Compliance Expenditure Cap Examples

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2023 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the 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 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

“**Affiliate**” 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. For purposes of this definition and the definition of “Permitted Transferee”, “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 at least 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 at least 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.

“**Agreement**” 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.

“**Alternative Delivery Point**” means a Scheduling Point other than the Delivery Point, that is agreed upon by Buyer and Seller.

“**Approved Meter**” means a CAISO-approved revenue quality meter or meters, or if a CAISO approved meter is not consistent with PTO requirements, then a PTO-approved meter or meters, together with a CAISO-approved or PTO-approved, as the case may be, data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

“Available Capacity” means the capacity from Buyer’s Share of the Facility, expressed in whole MW, that is available to generate Energy.

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

“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 thirty (30) days (provided that such thirty (30) day period shall be extended to sixty (60) days if Seller is actively contesting the petition), (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.

“Business Day” means any day except a Saturday, Sunday, the Friday after the U.S. Thanksgiving holiday, 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.

“Buyer Performance Security” means cash or Letter of Credit in the amount equal to the Seller Performance Security.

“Buyer Lockbox Arrangement” has the meaning set forth in Section 8.12.

“Buyer’s Share” means the percentage that is equal to the quotient of the Guaranteed Capacity *divided* by the Installed Capacity (or, prior to the Commercial Operation Date, the total nameplate capacity of the Facility in operation at the time), not to exceed one hundred percent (100%), as such percentage may change from time to time with changes to the Installed Capacity in accordance with this Agreement, if applicable.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

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

“CAISO Operating Instruction” has the same meaning as “Operating Instruction” as defined in 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, to the extent subject to approval by FERC, as 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) as 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 Buyer’s Share of 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 at a particular moment, including those that can be delivered to the CAISO Grid and that can be purchased and sold pursuant to the CAISO Tariff (including Resource Adequacy Benefits and Resource Specific Import RA).

[REDACTED]

[REDACTED]

“CEC” means the California Energy Commission, or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“Change of Control” means any circumstance in which (a) in respect of Buyer, the Person that has ultimate control over Buyer ceases to have such ultimate control, and (b) in the case of Seller, the Ultimate Parent ceases to have control over Seller; *provided* that, for the avoidance of doubt, it shall not be a Change of Control of Seller if the Ultimate Parent retains either (i) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller, or (ii) the right to direct the policies or operations of Seller.

“COD Delay Damages Payment” has the meaning set forth in Exhibit B.

“Collateral Agent” has the meaning set forth in the Security Agreement.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” has the meaning set forth in Exhibit B.

“Compliance Actions” has the meaning set forth in Section 3.12.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” means [REDACTED]

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months, with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

“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 the Agreement; and all reasonable expenses, including reasonable attorneys’ fees incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement.

“COVID-19” means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or the efforts of a Governmental Authority to combat or mitigate such disease.

“CPUC” means the California Public Utilities Commission, or successor entity.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 19-02-022, 20-06-002, 20-06-031, and any other existing or subsequent decisions, resolutions or rulings related to the Resource Adequacy Program or any successor program, as may be amended from time to time by the CPUC.

“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 by S&P or Moody’s. Unless otherwise indicated herein, if ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Order” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by a Transmission Provider 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 Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or a Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation or deliveries of Delivered Energy from the Facility pursuant to a Curtailment Order. Curtailment Period shall not include periods during which Seller reduces generation as a result of a Market Curtailment Period.

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“Day-Ahead Forecast” means Buyer’s Share of the Third-Party Vendor Forecast, not to exceed the Hourly Delivery Cap, for each hour of the immediately succeeding day, based on a commercially reasonable forecasting methodology to determine the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice; *provided* that a Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately succeeding day, each succeeding non-Business Day and the next Business Day.

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

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

“Deemed Delivered Energy” means (i) Buyer’s Share of the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Market Curtailment Period, which amount shall be determined by Seller in a commercially reasonable manner using an

industry-standard methodology that utilizes Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice and actual meteorological conditions on Site as input for the period of time during such Market Curtailment Period, less (ii) the amount of Delivered Energy delivered to the Delivery Point during the Market Curtailment Period; *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

“Deemed Delivered RA” means, for any month, the amount of Resource Adequacy Benefits expressed in kW that Seller would have delivered to Buyer, but for Buyer’s actions or inactions (including failure to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO).

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.8(e).

“Delay Damages” means

“Delivered Energy” means, in any Settlement Period or Settlement Interval, as applicable, the sum of:

- (1) Subject to the Hourly Delivery Cap, (a) the lesser of (i) Buyer’s Share of the Energy produced by the Facility and delivered to the Delivery Point as measured in MWh by the Approved Meter, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use, or (ii) the quantity of Energy specified in the E-Tags associated with the Dynamic Transfer of the Delivered Energy, or (b) if a portion of the Facility output is curtailed at Seller’s election, in any Settlement Period or Settlement Interval that is not during a Curtailment Period or Market Curtailment Period and Buyer’s Share is not curtailed, then Delivered Energy for such Settlement Period or Settlement Interval will instead be equal to Buyer’s Share of the Energy that the Facility would have been able to produce and deliver to the Delivery Point if the Facility was not so curtailed, estimated in a manner consistent with the description set forth in clause (a), above; *plus*
- (2) all Replacement Energy delivered as part of prospectively delivered Replacement Product pursuant to Section 4.7(b)(i).

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means, at Seller’s option, (a) cash or (b) a Letter of Credit, in the amount set forth on the Cover Sheet.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Dynamic Schedule” has the meaning set forth in the CAISO Tariff.

“Dynamic Transfer” means either a Pseudo-Tie or a Dynamic Schedule.

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

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

“EIRP” means “Eligible Intermittent Resource Protocol” as described in Appendix Q of the CAISO Tariff or a successor CAISO program for intermittent resources.

“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 electrical energy, measured in MWh.

“Energy Replacement Damages” has the meaning set forth in Exhibit E.

“EPC Contract” means Seller’s engineering, procurement and construction contract for the Facility.

“E-Tag” 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(d).

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

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

“Expected Energy” means the quantity of Energy (with associated Green Attributes) that Seller expects to be able to deliver to Buyer at the Delivery Point during each Contract Year in the quantity specified on the Cover Sheet, [REDACTED]

[REDACTED]

“**Facility**” means the energy generating facility described on the Cover Sheet and in Exhibit A.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Floor Price**” means [REDACTED]

“**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 making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Future Environmental Attributes**” means Buyer’s Share of any and all generation 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 a wind generation facility as opposed to from a conventional generation resource.

“**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., SP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

“**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 and WREGIS.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Delivered Energy. 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 (SO_x), nitrogen oxides (NO_x), 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 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 associated therewith, (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” means a certificate or other instrument recognized by a Governmental Authority, with one Green Tag representing the Green Attributes associated with one (1) MWh of Energy generated by 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.

“Guaranteed Capacity” has the meaning set forth on the Cover Sheet.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed RA Amount” means Buyer’s Share of the quantity of Capacity Attributes (in MWs)

[REDACTED]

“**Guarantor**” means (A) (i) Pattern Energy Group LP or (ii) any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has [REDACTED]

[REDACTED] (d) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (B) in either the case of (i) or (ii), that executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit J, or as reasonably acceptable to Buyer.

“**Hourly Delivery Cap**” means the maximum amount of Energy and associated Renewable Energy Credits and Green Tags delivered to the Delivery Point and sold to Buyer in any given hour under this Agreement, which amount shall be equal to Buyer’s Share *multiplied* by 2,131 MW.

“**Imbalance Energy**” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Import Capability**” means that portion of the Maximum Import Capability at the Delivery Point or Alternative Delivery Point, if applicable, allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.

“**Indemnified Party**” has the meaning set forth in Section 16.1(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

“**Installed Capacity**” means the nameplate capacity of the Facility at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement), as evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached

as Exhibit G hereto, as it may be updated as set forth in Exhibit B by delivery of a subsequent certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Point of Interconnection, which amount shall be not less than three thousand (3,000) MW.

[REDACTED]

“Inter-SC Trade” 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 PTO’s Transmission System, and pursuant to which any Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the PTO’s Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Intertie” has the meaning set forth in the CAISO Tariff.

[REDACTED]

“Law” 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.

“Lender” means, collectively, 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 protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such [REDACTED]

[REDACTED] and (b) in a form substantially similar to the letter of credit set forth in [REDACTED]

“Licensed Professional Engineer” means either (i) DNV Energy USA Inc., (ii) UL Services Group LLC, (iii) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) 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 other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (ii) a person acceptable to Buyer in its reasonable judgment.

“LMP” means “Locational Marginal Price,” which has the meaning set forth in CAISO Tariff.

[REDACTED]

“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., SP-15), 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 E.

“Major Equipment Failure” means a failure of the Facility’s main step-up transformer or any associated high voltage equipment the procurement of which involves a similarly long lead time, or the failure of no less than thirty percent (30%) of the Facility’s medium voltage transformers or no less than thirty percent (30%) of the Facility’s wind turbine generators; in each case, as certified by a reputable independent engineer that is registered to do business in California, experienced with wind energy technology, and not a Seller Affiliate. For the purposes of Article 11, Seller may declare a Major Equipment Failure no more than twice during the Delivery Term.

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Delivered Energy during a Settlement Period or Settlement Interval [REDACTED] provided that the Market Curtailment Period shall also

include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff, and includes any replacement or successor metric used by the CAISO with respect to the ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.

“Milestones” means the development activities and dates associated therewith set forth on the Cover Sheet.

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in alternating current.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

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

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service or electronic communication (including email or other electronic means).

“Operating Restrictions” means the operational characteristics of the Facility set forth in Exhibit L.

“Outage Schedule” has the meaning set forth in Section 6.1.

[REDACTED]

“Owner” has the meaning set forth in Section 2.2.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains the Transmission System 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 set forth in Exhibit A.

“Party” has the meaning set forth in the Preamble.

“Parties” has the meaning set forth in the Preamble.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

“Performance Security” means, at Seller’s option (i) cash (ii) a Letter of Credit, and/or (iii) a Guaranty, in the amount set forth on the Cover Sheet.

“Permitted Transferee” means an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

[REDACTED] Unfunded Capital Commitments [REDACTED]

[REDACTED]; and

(b) At least three (3) years of experience in the ownership and operations of utility-scale wind-powered electricity generation facilities, or has retained a third-party with such experience to operate the Facility.

“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.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance which has been scheduled in advance, in accordance with Section 6.1.

“Portfolio Content Category 1” means the Renewable Energy Credit classification 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.

“PPA Provider” has the meaning set forth in the Security Agreement.

“Product” has the meaning set forth on the Cover Sheet.

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

“Progress Report” means a progress report including the items set forth in Exhibit C.

“Project” has the same meaning as “Facility”.

“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 utility-scale wind energy industry 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 Practice is 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.

“Pseudo-Tie” has the meaning set forth in the CAISO Tariff.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy produced by the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Market Curtailment Period, which amount will be calculated by reference to the amount of Deemed Delivered Energy and prorated for the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.

“ORE” has the meaning set forth for “Qualified Reporting Entity” in the WREGIS Operating Rules.

“RA Compliance Showing” means the RAR compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CAISO pursuant to the CAISO Tariff, or to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions.

“RA Deficiency Amount” has the meaning set forth in Section 3.8(e).

“RA Deficiency Amount Cap” means the maximum RA Deficiency Amount Seller shall pay to Buyer pursuant to Section 3.8(e)

“RA Guarantee Date” means

“RA Price” means the prevailing market price for Capacity Attributes determined by averaging quotes provided by Buyer from three (3) unaffiliated brokers, converted to \$/MWh of Delivered Energy.

“RA Shortfall Amount” means, in each month, the difference (expressed in kW) of the Guaranteed RA Amount for such month, *minus* the amount of Resource Adequacy Benefits delivered to Buyer for such month, *minus* any Deemed Delivered RA for such month.

“Real-Time Forecast” means Seller’s final forecast of Buyer’s Share of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses and not to exceed the Hourly Delivery Cap, for each hour of a given day, based on a commercially reasonable forecasting methodology to determine the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice;

provided that, for the avoidance of doubt, market conditions and pricing shall not be factored into such determination of the potential generation of the Facility.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“REC Price” means the prevailing market price (expressed in \$/MWh) for RECs meeting the RPS requirements for Portfolio Content Category 1, determined by averaging quotes provided by Buyer from three (3) unaffiliated brokers.

“Receiving Party” has the meaning set forth in Section 18.2.

“Recurring Certificate Transfers” has the meaning set forth in the WREGIS Operating Rules.

“Remedial Action Plan” has the meaning in Section 2.5(a).

“Renewable Energy Credit” or **“REC”** 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, 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.

“Replacement Energy” means

“Replacement Green Attributes” means Renewable Energy Credits meeting the RPS requirements for Portfolio Content Category 1.

“Replacement PPA” has the meaning set forth in Section 2.7.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes provided pursuant to Section 4.7, in an amount not to exceed ten percent (10%) of the Expected Energy for the Contract Year during which such Replacement Product is delivered to Buyer.

“Resource Adequacy Benefits” means the rights and privileges attached to Buyer’s Share of the Capacity Attributes available from the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in the CPUC Decisions and any subsequent CPUC

ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Requirement” or “RAR” means the capacity procurement obligations established by the CPUC pursuant to the CPUC Decisions, or by CAISO pursuant to the CAISO Tariff, or any other regional entity.

“Resource Data Template” has the meaning set forth in the CAISO Tariff.

“Resource Specific Import RA” means Capacity Attributes from a resource located outside of the CAISO Control Area (as defined in the CAISO Tariff) that is listed on the CPUC Net Qualifying Capacity list and that satisfies all other applicable requirements under the CPUC Decisions for delivery of Resource Adequacy Benefits, other than requirements that are required to be satisfied by Buyer pursuant to Section 3.8(d).

“S&P” 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.

“Scheduled Energy” means the Energy from Buyer’s Share of the Facility that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“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.

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

“Secured Creditor” means each PPA Provider or other party that is a Secured Creditor under the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, dated as of March 1, 2021, between Buyer and Collateral Agent, as collateral agent for the benefit of the Secured Creditors, or any successor agreement generally available to Buyer’s creditors.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(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). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

"Settlement Period" 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" has the meaning set forth in Section 6.3.

"Shared Facilities Agreement" has the meaning set forth in Section 6.3.

"Showing Month" means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of an RA Compliance Showing. For illustrative purposes only, pursuant to the applicable CPUC Decisions in effect as of the Effective Date, the RA Compliance Showing made in June is for the Showing Month of August.

"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 Form of Construction Start Date Certificate in the form of Exhibit H to Buyer.

"Station Use" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"SunZia Transmission Line" means that certain 3,000-MW high-voltage (+/-525-kV) transmission line originating at the Point of Interconnection (as defined in the Interconnection Agreement) in New Mexico and terminating near Phoenix, Arizona. The western terminus of the line will connect to the 500-kV Pinal Central Substation.

"SunZia Wind North" means that portion of the Facility identified as SunZia North in Exhibit A.

"SunZia Wind South" means that portion of the Facility identified as SunZia South in Exhibit A.

"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, the PTO or a Transmission Provider, 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.

“Tax” or **“Taxes”** 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.

“Tax Credits” means the Production Tax Credit and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

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

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means Buyer’s Share of (1) Energy delivered from the Facility, subject to the Hourly Delivery Cap, (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date; and (2) associated Green Attributes including RECs that meet the RPS requirements for Portfolio Content Category 1.

“Third-Party Vendor Forecast” means the forecast of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, provided by either (a) ENFOR A/S or (b) any other reputable third-party vendor that is registered to do business in California, experienced in providing and verifying wind energy generation forecasts, and not an Affiliate of Seller.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point, including the Participating Transmission Owner.

“Transmission System” means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service upstream to or downstream from the Delivery Point.



“Unfunded Capital Commitments” means as of any date of determination, the aggregate amount of all currently-available but undrawn capital obligated to be provided to a Person by investor(s) who have either (1) a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s or (2) a tangible net worth of at least One Hundred Fifty Million

Dollars (\$150,000,000), pursuant to binding, written agreements, not subject to the satisfaction of any conditions precedent to such funding outside the control of such Person.

“**WREGIS**” 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 4.8(e).

“**WREGIS Certificates**” 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.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

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;

(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;

(m) references to “reasonably acceptable” shall require that the Party with discretion shall not unreasonably withhold, delay or condition its approval;

(n) 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 and any contract term extension 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. In addition, the confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for [REDACTED] following the termination of this Agreement, all indemnity obligations shall remain in full force and effect for [REDACTED] following termination of this Agreement, all audit rights shall remain in full force and effect for [REDACTED] following the termination of this Agreement, and Buyer’s obligation to return to Seller the Development Security and/or

Performance Security less any amounts drawn in accordance with this Agreement shall remain in full force and effect following the termination of this Agreement.

2.2 **Facility Ownership.** Buyer acknowledges that, as of the Commercial Operation Date, the Facility will be owned by one or more of Seller's Affiliates (each an "Owner") that will be, in turn, owned by Seller, and the Facility will not be owned directly by Seller. As of the Commercial Operation Date, Seller will have, and throughout the Term Seller will maintain, such agreements with Seller's Affiliates and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Owners (including in respect of Seller performing the obligation or causing Owners to perform the obligation). Seller will maintain its ownership of the Owners throughout the Delivery Term and will not sell or transfer Owners without Buyer's consent, which consent shall not be withheld or delayed unreasonably.

2.3 **Obligations Prior to Delivery Term.** The Delivery Term shall not commence until Seller completes each of the following conditions. Upon receipt of Notice from Seller of the completion of each condition, Buyer shall, if it disputes the completion of the condition provide Notice to Seller stating Buyer's grounds for dispute within five (5) Business Days of receipt of Seller's Notice. In the event that Buyer fails to provide such Notice of dispute within such five (5) Business Days, Buyer shall be deemed to have accepted that the condition has been completed.

(a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibit F and Exhibit G;

(b) A Pseudo-Tie Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO, an agreement governing the terms of Dynamic Transfers between CAISO and the host Balancing Authority for the Facility, and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller, if, with respect to each such agreement, it is required under the CAISO Tariff or for Seller to meet its obligations under this Agreement, shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof have been satisfied and shall be in full force and effect;

(d) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(e) Installed Capacity equal to at least [REDACTED] of the Guaranteed Capacity has been completed and is ready to produce and deliver Product to Buyer, as stated in the certificate in the form of Exhibit F delivered pursuant to clause (a) of this Section 2.3;

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements pursuant to the WREGIS Operating Rules (that are reasonably capable of being completed prior to the Commercial Operation Date under the

WREGIS Operating Rules), 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, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has obtained insurance meeting the requirements of Article 17; *provided, however*, that Seller may deliver copies of certificates of such insurance to Buyer within ten (10) Business Days after the Commercial Operation Date;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all Delay Damages due and owing under this Agreement, if any.

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request.

2.4 **Progress Reports.** The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) Business Days after the close of (i) each calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and have regular meetings between representatives of Buyer and Seller to review such monthly reports and discuss the Facility's development and construction progress. The content of the Progress Report is set forth in Exhibit C. Seller shall also provide Buyer with any reasonably requested documentation (subject to availability and confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request. Buyer shall be entitled to provide such Progress Reports to any purchaser to whom Buyer resells the Product (or parts thereof); *provided* such purchaser shall have first executed a commercially reasonable non-disclosure agreement with Seller containing terms consistent with those in Article 18.

2.5 **Remedial Action Plan.**

(a) If Seller misses any [REDACTED] except as the result of a Force Majeure Event or Buyer default, Seller shall submit to Buyer, [REDACTED] 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), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date (as it may be extended pursuant to this Agreement); *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 Commercial Operation Date in accordance with the terms of this Agreement.

(b) Delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans, as applicable, with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement.

(c) Except as set forth in Section 2.6, so long as Seller is in compliance with its obligations under this Section 2.5, its failure to meet any Milestone shall not be a default under this Agreement.

2.6 Outside Commercial Operation Date.

(a) If Seller does not cause Construction Start to occur [REDACTED] and Seller does not provide a Progress Report that shows that the Commercial Operation Date is planned to occur prior to the Outside Commercial Operation Date, then Buyer may terminate this Agreement upon Notice to Seller, and neither Party shall have any liability to the other Party, except for the payment by Seller, as liquidated damages, of the Damage Payment.

(b) If Commercial Operation is not achieved by the Outside Commercial Operation Date, Buyer may declare an Event of Default in accordance with the terms of Section 11.1(b)(iv); *provided*, if Buyer has not declared an Event of Default and terminated this Agreement pursuant to Sections 11.1(b)(iv) and 11.2 [REDACTED], Seller may terminate this Agreement upon Notice to Buyer, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party, except for the payment by Seller, as liquidated damages, of the Damage Payment; *provided further*, that the time period for which Seller is subject to the right of first refusal pursuant to Section 11.8 shall be shortened on a day-for-day basis for each day following the Outside Commercial Operation Date for which Buyer does not exercise its in termination right in accordance with Section 11.1(b)(iv) and 11.2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 3
PURCHASE AND SALE**

3.1 **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 from Seller, all the Product produced by or associated with the Facility, subject to the Hourly Delivery Cap. The sale by Seller and purchase by Buyer of Delivered Energy hereunder shall be for resale. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes attributable to the Delivered Energy.

3.3 **Compensation.**

[REDACTED]

(d) Excess Settlement Interval Deliveries. If, during any Settlement Interval, Seller delivers Product amounts to Buyer, as measured by the amount of Delivered Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then Buyer shall not be obligated to pay for all such Excess MWh.

3.4 Imbalance Energy. Other than during a Market Curtailment Period, Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy but shall not be required to curtail the Delivered Energy other than pursuant to a Curtailment Order. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Seller shall be responsible for all CAISO costs, and shall be entitled to all CAISO revenues, associated with Imbalance Energy.

3.5 Ownership of Renewable Energy Incentives. 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, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. The Parties shall promptly notify each other upon becoming aware of the existence of Future Environmental Attributes and, subject to the final sentence of this Section 3.6(a), in such event, Buyer shall have the exclusive right to claim such Future Environmental Attributes by providing Notice to Seller. If Buyer provides such Notice, Buyer

shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(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) the determination of any additional costs to be borne by Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller may, at its option, provide Notice of such Test Energy generation and, upon such Notice, Buyer may, at its option, purchase Test Energy at [REDACTED]. If Buyer does not agree to purchase Test Energy, Seller may sell such Test Energy, and any related products or attributes, to third parties and keep any and all revenues (and bear any and all costs) associated with such sales.

3.8 **Capacity Attributes.**

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

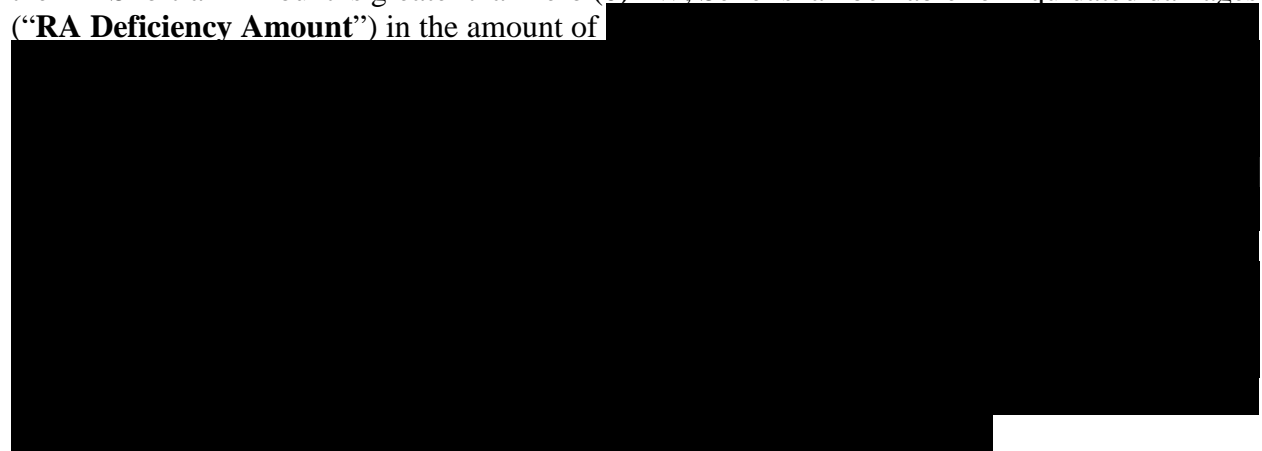
(b) Throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits at the Delivery Point. Throughout the Delivery Term, subject to Section 3.8(d), Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, 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, including submitting Supply Plans in accordance with CAISO and CPUC requirements. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines are as follows: (A) [REDACTED] prior to the Showing Month covered by the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Term.

(d) Buyer acknowledges that it will be required to take certain actions and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes associated

with the Product (including obtaining and maintaining Import Capability necessary to import the Guaranteed RA Amount from the Facility into the CAISO), in each case as may be required under applicable Law and as may change from time to time. Upon Buyer's request, Seller shall use commercially reasonable efforts to support Buyer in obtaining such Import Capability. To the extent Buyer does not or cannot maintain Import Capability or any other rights or capacities necessary to support the importation of the Guaranteed RA Amount into the CAISO or otherwise receive or utilize the Capacity Attributes, for reasons other than a Seller failure under this Agreement or the inability of Seller to maintain the Facility as a Pseudo-Tie Resource, the Resource Adequacy Benefits that are not imported or that cannot be imported shall constitute Deemed Delivered RA.

(e) From and after the RA Guarantee Date, for any calendar month in which the RA Shortfall Amount is greater than zero (0) kW, Seller shall be liable for liquidated damages ("**RA Deficiency Amount**") in the amount of



3.9 CEC Certification and Verification. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 Non-Modifiable Terms.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6]**

(b) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the

laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]

(d) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2]

3.11 **California Renewables Portfolio Standard.** Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including, subject to Section 3.12, scheduling or delivery information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product. Subject to Section 3.12, Seller represents and warrants the Product meets the requirements set forth in PUC Code 399.16(b)(1) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

3.12 **Compliance Expenditure Cap.** Notwithstanding anything herein to the contrary, if Seller establishes to Buyer's reasonable satisfaction that a change in Law occurring after the Effective Date has increased Seller's out-of-pocket costs above the costs 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 below, then the Parties agree that the maximum amount of out-of-pocket costs and expenses Seller shall be required to bear during any Contract Year shall be capped at [REDACTED] and in the aggregate during the Delivery Term shall be capped at [REDACTED] ("Compliance Expenditure Cap"):

- (a) CEC Certification and Verification;
- (b) Green Attributes;
- (c) WREGIS; 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 reasonably demonstrating 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 or some portion of the reasonably incurred costs that exceed the Compliance Expenditure Cap specified in such Notice (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; *provided*, if in any Contract Year, Seller’s costs to take Compliance Actions exceed the annual Compliance Expenditure Cap: (i) Buyer may pay to Seller any reasonably demonstrated amounts that Seller expends in connection with Compliance Actions that are over the annual Compliance Expenditure Cap; (ii) in the following Contract Year, Seller shall reimburse Buyer for all such amounts paid by Buyer [REDACTED], and provided that all such reimbursed amounts in combination with all other Seller costs and expenses associated with Compliance Actions shall not [REDACTED] [REDACTED] in the aggregate over the Contract Term; and (iii) such reimbursed amounts shall be considered costs and expenses associated with Compliance Actions and shall count towards the current annual and aggregate Compliance Expenditure Cap; for the avoidance of doubt, in no case shall Seller be required to bear any costs in connection with Compliance Actions (including those associated with a reimbursement by Seller of Buyer payments hereunder) in any Contract Year or in the aggregate in excess of the respective Compliance Expenditure Cap. If Buyer does not respond to a Notice given by Seller under this Section 3.12 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 obligations to take, and no liability for a failure to take, such Compliance Actions for the remainder of the 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 Buyer 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 documentation of such costs from Seller. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs for less than all of the costs that exceed the Compliance Expenditure Cap, Seller shall only be obligated to take the Compliance Actions covered by the Accepted Compliance Costs.

The term “commercially reasonable efforts” as used in Section 3.10 means efforts consistent with and subject to this Section 3.12.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Delivered Energy through Dynamic Transfers, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith.

(b) **Green Attributes.** Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy 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.

(c) **Interconnection Capacity and Transmission Rights.** Seller shall maintain (i) contractual rights to interconnection capacity that is no less than the Interconnection Capacity Limit, and (ii) firm transmission rights sufficient to deliver 2,131 MW_{AC} to the Delivery Point, in each case throughout the Delivery Term.


4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Subject to Section 5.1, Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Energy from the Facility to the Delivery Point and Buyer shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Energy at and after the Delivery Point.

(b) **Green Attributes.** 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) **Seller as Scheduling Coordinator for the Facility.** Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point.

 (i) any generation above the Day-Ahead Forecast that is awarded a Day-Ahead Schedule or (ii) all generation in the event that there is no Day-Ahead Schedule Seller shall perform or cause to be performed all scheduling and settlement activities in compliance with (i) the CAISO Tariff and (ii) Prudent Operating Practice. The Parties agree to communicate and cooperate as reasonably necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of this Agreement. Seller (as the Facility's

Scheduling Coordinator) shall ensure that all Delivered Energy and Replacement Energy is electronically tagged (E-tagged) in accordance with Prudent Operating Practice. Seller shall comply with any requirements of the CPUC, CEC, WREGIS and CARB, as applicable, with respect to documenting and reporting E-tags, including, as applicable, requirements to match E-tags to WREGIS Certificate creation. ~~Seller shall use commercially reasonable efforts to provide additional information as reasonably requested by Buyer on E-tags for the Delivered Energy.~~

(b) Floor Price. Seller may, but is not required to, reduce deliveries of Product during periods in which the LMP in either the Day-Ahead Market or the Real-Time Market at the Delivery Point is less than the Floor Price, as applicable; *provided*, that if Seller does not reduce deliveries of Product during such periods, Seller shall be compensated for such Delivered Energy pursuant to Section 3.3(a) and such Delivered Energy shall not be considered to be Deemed Delivered Energy. The Parties agree to use good faith efforts to work together to permit Buyer, after the period during which Seller is eligible to obtain PTCs for Delivered Energy, [REDACTED]

(c) CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, and other payments), including costs and 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. 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller's responsibility except to the extent such costs are incurred due to the fault or negligence of Buyer.

(d) Master Data File and Resource Data Template. 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. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

4.4 Forecasting. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practice.

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is

prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's Available Capacity, by hour, and Seller's projection of scheduled maintenance for the following calendar year in a form reasonably requested by Buyer.

(b) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of Buyer's Share of each month's average-day Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit D, or as reasonably requested by Buyer.

(c) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the compliance deadline for the monthly Supply Plan for each Showing Month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of Buyer's Share of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, and Available Capacity for each day of the following month in a form reasonably requested by Buyer.

(d) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with (i) a non-binding forecast of its best estimate of Available Capacity and (ii) the Day-Ahead Forecast, in each case, for each hour of the immediately succeeding day.

(e) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes to the Day-Ahead Forecast resulting from changes of fifteen (15) MW or more in the availability of the Installed Capacity or changes of fifteen (15) MWh or more in the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, as applicable, relative to the amounts that the Day-Ahead Forecast was based on, in each case, due to Forced Facility Outage or Force Majeure Event, as soon as reasonably possible, but no later than sixty (60) minutes prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the availability of the Installed Capacity or the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, changes by at least fifteen (15) MW or fifteen (15 MWh), as applicable, due to Forced Facility Outage or Force Majeure Event 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 Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Installed Capacity or hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of becoming aware of the Forced Facility Outage. Seller shall inform Buyer as soon as reasonably practicable 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 Real-Time Forecasts shall be communicated by email to Buyer unless Buyer requests an alternative method of communications reasonably acceptable to Seller.

4.5 **Dispatch Down/Curtailment.**

(a) **General.** Subject to Section 4.5(b), Seller agrees to reduce deliveries of the Energy produced by the Facility by the amount and for the period set forth in any Curtailment Order; *provided* that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.



4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit E:

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any Planned Outage.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. As soon as practicable after the Forced Facility Outage has occurred, Seller shall provide Buyer with Notice by e-mail including the expected duration (if known) of any Forced Facility Outage and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage. Upon Buyer's reasonable request, Seller shall promptly prepare and provide to Buyer all reports of Forced Facility Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws, provided that Seller may redact such reports as necessary with respect to any Confidential Information except to the extent such Confidential Information is required to be provided to CAISO by Buyer.

(c) **System Emergencies and other Events.** Seller shall be permitted to reduce deliveries of Product (i) during any period of System Emergency, (ii) pursuant to a Curtailment Order, (iii) during a Market Curtailment Period, (iv) during any Force Majeure Event, (v) as

required by Prudent Operating Practice or (vi) otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement. Notwithstanding anything in this Agreement to the contrary, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period or Market Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(e) Real-Time Curtailment. Seller shall be permitted to reduce Facility generation during a period in which the LMP at the Delivery Point in the Real-Time Market is below the Floor Price. During such periods, (i) when the Real-Time Forecast exceeds the portion of the Day-Ahead Forecast that has a Day-Ahead Schedule, Seller shall be permitted to reduce deliveries of Product to Buyer to equal no less than the portion of the Day-Ahead Forecast that has a Day-Ahead Schedule, and (ii) when the Real-Time Forecast is equal to or less than the portion of the Day-Ahead Forecast that has a Day-Ahead Schedule, Buyer shall receive Product based on Buyer's Share of the generation that the Facility would have been able to produce and deliver to the Delivery Point (taking into account Seller's rights to reduce deliveries in Section 4.6(c)) but did not produce and deliver, due to the LMP at the Delivery Point in the Real-Time Market being below the Floor Price, and such amount shall be considered "Delivered Energy" for payment and invoicing purposes.

4.7 Guaranteed Energy Production.

(a) After the first Contract Year, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each period of [REDACTED]

[REDACTED] ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Product for each Performance Measurement Period, as measured in MWh, equal to [REDACTED] of the average annual Expected Energy for the [REDACTED] in the applicable Performance Measurement Period. The calculation will be performed once each Contract Year, beginning with the third anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods and Market Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods, or Market Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall, at its discretion (i) provide Replacement Product retroactively pursuant to Section 4.7(b)(ii), or (ii) pay Buyer Energy Replacement Damages calculated in accordance with Exhibit E.

(b) Seller shall be permitted to deliver Replacement Product (i) prospectively during any Performance Measurement Period if Seller reasonably anticipates that delivery of such Replacement Product is necessary to achieve the Guaranteed Energy Production for such Performance Measurement Period, or (ii) retroactively during the Contract Year immediately following any Performance Measurement Period in accordance with Section 4.7(a) above; *provided*, Seller's right to deliver Replacement Product shall be subject to mutual agreement of the Parties (in the reasonable discretion of each) upon a delivery schedule for such Replacement Product;

Seller shall provide Notice to Buyer of any proposed delivery of Replacement Product, including a proposed schedule of such deliveries, no later than thirty (30) days prior to the proposed delivery of such Replacement Product, and no later than thirty (30) days after the conclusion of any Performance Measurement Period with respect to which Seller proposes to deliver retroactive Replacement Product. If the Parties cannot reach agreement on a schedule of deliveries within thirty (30) days of such Notice, Seller shall have no right to deliver the proposed Replacement Product.

4.8 **WREGIS.** Seller shall, at its sole expense, 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 Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer 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 and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall satisfy its obligations pursuant to Section 3.10(d) and Section 4.2(b) by fulfilling its obligations under Sections 4.8(a) through (f) below.


(a) Prior to the Commercial Operation 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 Recurring Certificate Transfers from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) 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.

(b) Seller shall cause Recurring 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 the creation of a WREGIS Certificate. WREGIS Certificates must be matched with E-Tags associated with the Dynamic Transfers. WREGIS Certificates without matching E-Tags associated with Dynamic Transfers, will be rejected.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the amounts corresponding to the Facility's metered data that match E-Tags associated with the Dynamic Transfers. Subject to delivery of Replacement Product, Seller shall ensure that no WREGIS Certificates are transferred to Buyer's WREGIS Account unless they are the result of Delivered Energy reflected in the Facility's metered data and matched with E-Tags associated with the Dynamic Transfers.

(d) Due to the approximately ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**").



Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, Delivered Energy shall not be reduced pursuant to this Section 4.8(e) and the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 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 Delivered Energy in the same calendar month.

ARTICLE 5 TAXES

5.1 **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 delivery of Product to Buyer, that are imposed on Product 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 the 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 Product hereunder is exempt from or not subject to any particular Tax, the exempted Party shall provide the other Party with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If the exempted Party does not provide such documentation, then such Party shall indemnify, defend, and hold harmless the other Party from any liability with respect to Taxes from which the exempted Party claims it is exempt.

5.2 **Cooperation.** 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 **Maintenance of the Facility.** 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. On or before October 1st each year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages for the next calendar year ("**Outage Schedule**");

[REDACTED]

Seller shall provide Buyer Notice of any changes to the Outage Schedule as soon as practicable, but no later than five (5) Business Days of the date such change is made.

(a) Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule,

and Seller shall use commercially reasonable efforts to accommodate Buyer's requests regarding the timing of any Planned Outage, consistent with Prudent Operating Practices. Seller shall provide Notice to Buyer of any changes to the Outage Schedule after receiving Buyer's comments.

(b) To the extent commercially reasonable, Seller shall 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.

6.2 **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 K 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 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**", and any such facilities, rights or obligations subject thereto, "**Shared Facilities**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements. Seller agrees that the Shared Facilities Agreements (i) shall not preclude Seller from performing or satisfying, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Installed Capacity, (iii) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities, except to the extent such curtailment is caused by the Facility or Seller's actions or inactions with respect to the Facility. Seller shall not, and shall not permit any Affiliate in respect of the Facility to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement *minus* 2,131 MW.

6.4 **CAISO Tariff Requirements.** Throughout the Delivery Term, Seller shall either (i) maintain the Facility as a Pseudo-Tie Resource in compliance with all applicable requirements of the CAISO Tariff for such resources, or (ii) otherwise ensure that the Product can be delivered to Buyer at the Delivery Point as contemplated under this Agreement.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed at the switching station adjacent to the SunZia East Converter Station and maintained at Seller's cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practice and CAISO or PTO requirements, as applicable. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter 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 Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Approved Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO, as applicable, the meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Buyer and Seller, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRIS-S) (or its successor) or directly from the Approved Meter at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or 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 the second half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer no sooner than fifteen (15) days after the end of the prior monthly delivery period. Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy for each Settlement Period during the preceding month, the applicable Contract Price, the LMP in the Day-Ahead Market at the Delivery Point for each Settlement Period; (b) information supporting the amount of Deemed Delivered Energy, and the amounts determined pursuant to Section 4.6(e), if applicable, and Adjusted Energy Production, (c) a reconciliation of hourly meter data, E-Tag data and associated calculations, including the lesser of each by hour, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (d) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Transfers; (e) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; (f) information as reasonably necessary to verify Contract Revenues

from third-party sales pursuant to Section 4.5(b), if any; and (g) be in a reasonable format covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within twenty five (25) days after the end of the prior monthly delivery period; *provided*, if Seller delivers an invoice to Seller after the fifteenth (15th) day following the end of the prior monthly delivery period, Buyer shall pay undisputed invoice amounts no later than the tenth (10th) day following delivery of such 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* [REDACTED] (the “**Interest Rate**”). 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 **Books and Records.** 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. Upon fifteen (15) days’ prior Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party (subject to the two (2) year retention requirement of the preceding sentence) pertaining to all invoices generated pursuant to this Agreement, subject to redaction by Seller with respect to Confidential Information. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement, for a period of three (3) years after final payment hereunder, because the compensation under this Agreement exceeds \$10,000.

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, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer’s 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 non-erring Party received Notice thereof.

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 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 ten (10) 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 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 third party not affiliated with any Party and such third party corrects its information after the twelve-month 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 undisputed amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and E, interest, and payments or credits, including pursuant to Section 4.3(c), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (A) Seller's delivery of the Performance Security, or (B) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If and to the extent that any portion of the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iv) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Development Security. If and to the extent that any portion of the Development Security is a Guaranty, Seller shall (i) provide prompt Notice to Buyer if Guarantor becomes Bankrupt or otherwise fails to meet the criteria for an acceptable Guarantor as set forth in clauses (c) and (d) of the definition of Guarantor, but not later than ten (10) Business Days after Seller becomes aware of such development and (ii) post substitute collateral that meets the requirements set forth in the definition of Development Security within ten (10) Business Days. Seller shall have no obligation to replenish the Development Security following any draws thereon by Buyer. Seller's maximum liability for an Event of Default or failure to perform its obligations hereunder prior to the Commercial Operation Date shall be capped at the amount of the Development Security, less any amounts collected by Buyer prior to such Event of Default or failure to perform.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (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 both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Within ten (10) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that Performance Security is restored to the amount on Cover Sheet. If and to the extent that any portion of the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iii) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Performance Security. If and to the extent that any portion of the Performance Security is a Guaranty, Seller shall (i) provide prompt Notice to Buyer if Guarantor becomes Bankrupt or otherwise fails to meet the criteria for an acceptable Guarantor as set forth in clauses (c) and (d) of the definition of Guarantor, but not later than ten (10) Business Days after Seller becomes aware of such development and (ii) post substitute collateral that meets the requirements set forth in the definition of Performance Security within ten (10) Business Days.

[REDACTED]

8.10 Buyer's First Priority Security Interest in Cash or Cash Equivalent Collateral. 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 in, and lien on (and right to net against), and assignment of the Development Security or Performance Security, any other cash collateral and cash equivalent collateral posted by Seller 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 first-priority 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 8.10, the final sentence of Section 11.2 and the provisions of Article 12):

(a) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, 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, as applicable; 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.

8.11 **Buyer Financial Statements.** Buyer shall provide to Seller, both upon request and as indicated below: (a) within ninety (90) days following the end of each fiscal quarter, an unaudited quarterly financial statement of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Government Accounting Standards Board in the United States, consistently applied; (b) within one hundred and eighty (180) days following the end of each fiscal year, annual financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with the requirements of California law applicable to Joint Powers Authorities; (c) as available, Buyer's annual report; (d) reserve levels; (e) subscription and opt out rates; and (f) other financial and operational information as may be reasonably requested by the Seller's financing parties from time to time; *provided* that nothing in this Section 8.11 shall require Buyer to provide information that is not generally available to Buyer as part of its normal accounting and financing reporting processes.

8.12 **Buyer Lockbox Arrangement.**

(a) To secure Buyer's obligations under this Agreement, Seller shall have the right to execute a Joinder, which shall allow Seller to become a PPA Provider and Secured Creditor under the Intercreditor and Collateral Agency Agreement for so long as Buyer is subject to the Security Agreement and Lockbox Account (or any successor arrangement generally available to Buyer's creditors) (the current arrangement and any successor arrangement generally available to Buyer's creditors is the "**Buyer Lockbox Arrangement**"); *provided, however*, that if Buyer (i) has a Credit Rating of at least "Baa3" or higher by Moody's and "BBB-" or higher by S&P, if rated by both Moody's and S&P, or Buyer has a Credit Rating of at least "Baa3" or higher by Moody's or "BBB-" or higher by S&P, if rated by only one of Moody's and S&P, or (ii) provides Buyer Performance Security, then so long as Buyer is not in default under this Agreement or the Buyer Lockbox Arrangement, Buyer may, at the direction of its Board, request the dissolution of the Buyer Lockbox Arrangement and Seller hereby agrees that (x) its security interest under the Buyer Lockbox Arrangement shall terminate, without further action, effective upon the termination of the security interests of all other PPA Providers under the Buyer Lockbox Arrangement and (y) if requested by Buyer, Seller would promptly execute a written termination

statement confirming such termination in accordance with the Buyer Lockbox Arrangement. If, subsequent to the dissolution and termination of the Buyer Lockbox Arrangement, Buyer ceases to maintain the required Credit Rating under clause (i) of this Section 8.11(a) or fails to maintain the Buyer Performance Security required under clause (ii) of this Section 8.11(a), then Buyer shall within five (5) Business Days either post replacement Buyer Performance Security or enter into a substantially similar successor Buyer Lockbox Arrangement under which Seller is allowed to become a PPA Provider and Secured Creditor.

(b) Under the Buyer Lockbox Arrangement:

(i) Buyer shall provide Notice to Seller of the termination of all security interests under the Security Agreement at least five (5) Business Days prior to such termination.

(ii) Buyer further agrees it will not create any additional security interests (i) under the Security Agreement on terms more favorable than those currently offered to Seller, or (ii) under any arrangement similar to the Security Agreement that is generally available to Buyer's creditors unless Seller is offered the right to participate in such arrangement on terms no less favorable than those offered to the other participants.

(iii) In addition, so long as Buyer is not in default under this Agreement, the Intercreditor and Collateral Agency Agreement and the Security Agreement, Buyer may request the dissolution of the current Buyer Lockbox Arrangement in order to enter into a substantially similar successor Buyer Lockbox Arrangement and, provided that Seller is allowed to become a PPA Provider and Secured Creditor under the successor Buyer Lockbox Arrangement, Seller hereby agrees that (x) its security interest under the Security Agreement shall terminate, without further action, effective upon the termination of the security interests of all other PPA Providers under the Security Agreement, and (y) if requested by Buyer, Seller would promptly execute a written termination statement confirming such termination in accordance with Section 7.12 of the Security Agreement.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the physical or electronic addresses set forth on Exhibit K or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **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 email or other electronic means), 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. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided in Exhibit K.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” 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, which event or circumstance was not anticipated as of the Effective Date and 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 COVID-19 (but only to the extent that new governmental rules or mandates related to COVID-19 are implemented that were not in place as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; acts or failure to act by a Governmental Authority; war; blockade; civil insurrection; riot; civil disturbance; serial defect; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) 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 generated by the Facility 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, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is a disruption of payment systems caused by a Force Majeure Event; (iv) a Curtailment Order, except to the extent that a Curtailment Order is caused by an event that otherwise qualifies as 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; or

(viii) except as the Guaranteed Commercial Operation Date may be extended as a result of a Development Cure Period, Seller's inability to achieve Commercial Operation following the Guaranteed Commercial Operation Date; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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. 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 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 (a) suspend or excuse the obligation of a Party to make any payments due hereunder, except as provided above, (b)

or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(iv) after all applicable extensions of the Guaranteed Commercial Operation Date, and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2. Any delays caused by a Force Majeure Event will not serve to increase the Contract Term of this Agreement.

10.3 **Notice.** 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, the anticipated extent of any delay or interruption in performance, and, to the extent reasonably practicable, a mitigation plan for limiting or overcoming the impacts of the Force Majeure Event 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. Upon written request from the non-claiming Party, the Party claiming that a Force Majeure Event has delayed or interrupted its performance shall provide documentation demonstrating that the claimed delay or interruption was the result of a Force Majeure Event and the delay or interruption did not result from the affected Party's actions or failure to take reasonable actions to mitigate the impacts of the Force Majeure Event.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be unable to perform its material obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party experiencing the Force Majeure Event; *provided* that if Seller is the Party claiming such Force

Majeure Event and such Force Majeure Event cannot reasonably be cured within such twelve (12) month period, then Seller may provide a plan to Buyer, which must be acceptable to Buyer in its reasonable discretion, to cure such Force Majeure Event within an additional six (6) month period and Buyer may not terminate this Agreement due to such Force Majeure Event unless Seller has not resumed performance of its material obligations hereunder upon the expiration of such additional six (6) month period. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) 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 [REDACTED] 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 deemed made or repeated, and such representation or warranty is not corrected within [REDACTED] after Notice thereof; *provided*, that this [REDACTED] period shall be extended by up to an additional sixty (60) days if (a) the breach cannot reasonably be cured within the [REDACTED] period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original [REDACTED] period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within [REDACTED] after Notice thereof; *provided*, that this [REDACTED] period shall be extended by an additional sixty (60) days if (a) the breach cannot reasonably be cured within the [REDACTED] period despite diligent efforts, (b) the default is capable of being cured within the additional [REDACTED] period, and (c) the Defaulting Party commences the cure within the original [REDACTED] period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iv) failure by such Party to satisfy the collateral requirements pursuant to Sections 8.7, 8.8 or 8.11, as applicable;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as appropriate; or

(vii) such Party consolidates or amalgamates with, or merges with or into, 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 fails to assume all the obligations of such Party under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) except as otherwise provided herein, if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within [REDACTED] after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not remedied [REDACTED] after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the 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; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(iii) 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 either (1) cash, or (2) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder [REDACTED] after Seller receives Notice 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 [REDACTED] prior to the expiration of the outstanding Letter of Credit.

[REDACTED]

[REDACTED]

[REDACTED]



(c) with respect to Buyer as the Defaulting Party, the failure of Buyer to comply with the requirements of Section 8.12.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) 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 Contract Term effective as of the Early Termination Date;

(b) 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 occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of an Event of Default occurring on or after the Commercial Operation Date);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(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 the Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.**

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a):

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit any Delay Damages paid by Seller, plus those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall equal to the Termination Payment as set forth in Section 11.3(b) below, calculated as of the Early Termination Date. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The Termination Payment for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. 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 (which shall not include Affiliates of the Non-Defaulting Party) 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 Notice of Payment of Termination Payment. 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 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 the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** 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 15.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall use commercially reasonable efforts 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 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN OR AN INDEMNITY CLAIM UNDER ARTICLE 16, 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, OR OTHERWISE.

12.2 Waiver and Exclusion of Other Damages. 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 THE PARTIES' 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.

NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, PRIOR TO THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT FOR ANY AND ALL REASONS SHALL NOT EXCEED THE SUM OF (A) THE AMOUNT OWING OR PAID BY SELLER IN RESPECT OF DELAY DAMAGES, IF ANY, AND (B) THE AMOUNT OF THE DAMAGE PAYMENT OWED BY SELLER, IF ANY.

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 RENEWABLE ENERGY INCENTIVES (INCLUDING ANY TAX CREDITS) NOT GENERATED OR OBTAINED 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 OR REPAYMENT OF ANY RENEWABLE ENERGY INCENTIVES DUE TO OR RESULTING FROM BUYER'S DEFAULT, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT E, 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. 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.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR

THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** 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 jurisdiction of its formation, 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 corporate 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.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a California Joint Powers Authority, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation, 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 Buyer.

(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, 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.

13.3 General Covenants. 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 General Prohibition on Assignments. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect Change of Control of a Party (whether voluntary or by operation of Law) will be deemed an assignment and will require the prior written consent of the other Party, except as provided in Section 14.3. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall work in good faith with Seller (and its Affiliate(s)) and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”) in a form mutually agreeable to Buyer, Seller and Lender; *provided, however*, that Buyer shall be under no obligation to ultimately enter into a Collateral Assignment Agreement to the extent the form thereof cannot be agreed.

14.3 **Permitted Assignment.** Notwithstanding Section 14.1, and in addition to its rights set forth in Section 14.2, Seller may at any time, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) (i) to an Affiliate of Seller, or (ii) in connection with a tax equity financing (regardless of whether a Change of Control results from such tax equity financing). Seller may also, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) to a Person that is, individually, or to Persons that collectively qualify as, a Permitted Transferee.

14.4 **Permitted Buyer Assignment.** Without the prior written consent of Seller, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has [REDACTED] (“**Limited Assignee**”) of Buyer’s right to receive Product and Buyer’s obligation to make payments to Seller, subject to execution of an assignment agreement in a form reasonably acceptable to Seller between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee’s timely payment of amounts due under this Agreement and that Buyer remains liable for Buyer’s obligations under this Agreement notwithstanding the limited assignment. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer, the requirements of this Section 14.4, and Lender consent.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties’ agreement, then in the courts of the State of California, in either case sitting in County of Los Angeles, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees, attorneys, representatives and agents (collectively, the “**Indemnified Party**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses and expert witness fees (collectively “**Indemnifiable Event**”), to the extent such Indemnifiable Event arises out of, results from, or is caused by any of the following: (a) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by the Indemnifying Party or any of its subcontractors or anyone that they control; (b) any violation of applicable Law by the Indemnifying Party, in each case in connection with this Agreement; or (c) third-party claims resulting from the Indemnifying Party’s material breach (including inaccuracy of any representation of warranty made hereunder) or non-performance of its material obligations under this Agreement. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations. The Parties’ indemnification obligations survive the expiration or termination of this Agreement until the relevant statute of limitations.

(b) Nothing in this Section 16.1 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 to the extent of its own 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.

16.2 **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 16 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 reasonably 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. Notwithstanding the preceding sentence if the settlement consists solely of a monetary payment by the Indemnifying Party, such settlement shall not require the consent of the Indemnifying Party. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, 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 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of [REDACTED], and a general aggregate of not less than [REDACTED] for combined bodily injury and property damage; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. The amounts of liability insurance described in this Article 17 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance. Such insurance shall contain standard cross-liability and severability of interest provisions such that each person is protected in the same manner as though a separate policy has been issued to each but nothing therein shall operate to increase the insurance company's liability beyond the amount the insurance company would have been liable if only one Person or interest had been named as insured. The liability insurance policies referenced in this Article 17 shall (x) provide an endorsement waiving rights of subrogation against Buyer, (y) name Buyer as additional insured on all required liability insurance (except workers compensation), and (z) be primary to any insurance of Buyer that may apply to such occurrence, accident or claim and no "other insurance" provision shall be applicable to Buyer or any additional insureds, by virtue of having been named an additional insured under any policy of insurance.

(b) Workers Compensation and Employer's Liability Insurance. Employers' Liability insurance shall not be less than [REDACTED] providing statutory benefits as required by Law (if any exposure exists) for injury, sickness, disability or death of the employees.

(c) Business Auto Liability Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] combined single limit. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired motor vehicles in the performance of the Agreement.

(d) Property Insurance. Seller shall maintain or cause to be maintained property insurance covering the Facility against physical loss or damage, including coverage for natural

perils including but not limited to flood, earthquake, windstorm, severe convective storm and wildfire, all with limits in accordance with industry standard recognizing that natural perils may be subject to a lower sublimit. Coverage will be on an “all-risk” basis including mechanical and electrical breakdown.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller: (a) pricing and other commercially-sensitive or proprietary information provided to or from Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” 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 after the time of the delivery; (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.

18.2 **Duty to Maintain Confidentiality.** Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party, except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, including the California Public Records Act, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action within five (5) Business Days after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party to the extent required under applicable Law, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages may be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any

covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach may cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in Law, in equity or otherwise, Disclosing Party will be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Permitted Disclosures.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by either Party to such Party's counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, Affiliates or actual or prospective owners, investors, lenders, directors, underwriters, contractors, suppliers or others involved in the construction, operation and financing transactions and arrangements for a Party or its affiliates, or any of its or their 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 Article 18 to the same extent as if it were a Party, or is bound by substantially similar confidentiality requirements.

18.5 **Press Releases.** 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 public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **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.

19.2 **Amendments.** 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.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** 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).

19.5 **Severability.** 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.

19.6 **Mobile-Sierra.** 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 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, including electronic signatures, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **Change in Electric Market Design.**

(a) 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. 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 15. 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) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(b) If any of the Transmission Systems utilized to deliver Product to the Delivery Point under this Agreement are integrated into a new or existing regional transmission organization or independent system operator and such integration has a material and adverse impact on either Party's performance under this Agreement, including the costs of either Party to perform, then the affected Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to restore the balance of benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith; *provided*, that neither Party shall be obligated to amend this Agreement if such amendment(s) would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of such Party's rights, benefits, risks and/or obligations under this Agreement.

19.11 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authorities 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 the PPA.

19.12 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.

19.13 **Further Assurances.** Each of the Parties hereto agree to use commercially reasonable efforts to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

SunZia Wind PowerCo LLC

San Diego Community Power

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Signature page to Power Purchase and Sale Agreement

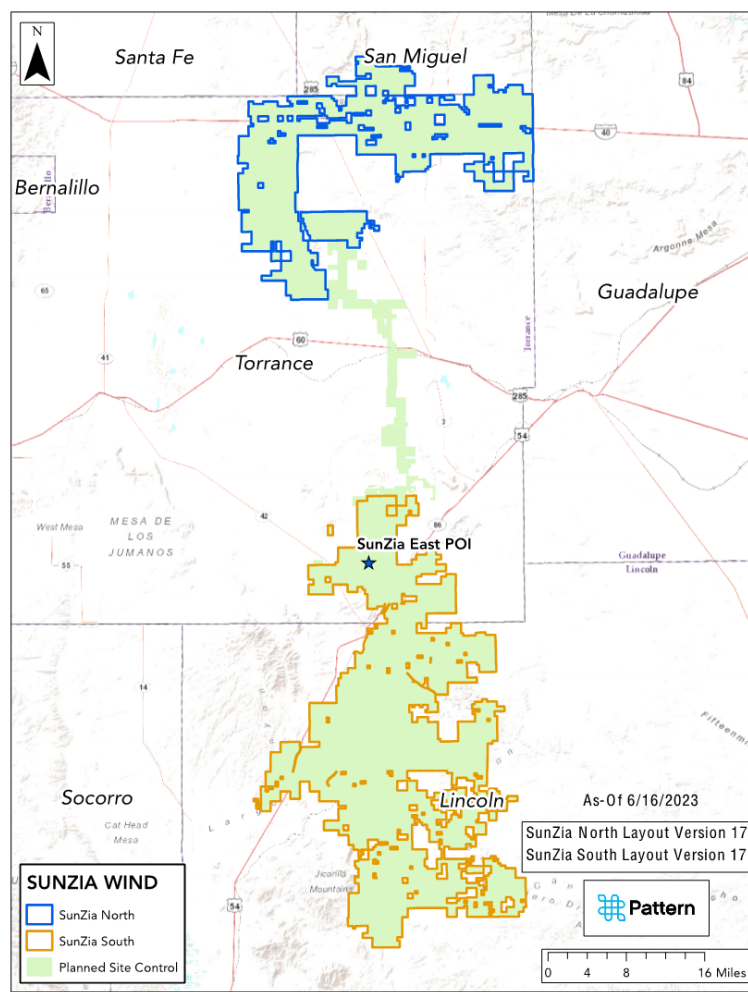
EXHIBIT A

FACILITY DESCRIPTION

The Facility Description provided herein reflects Seller's expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer prior to the Construction Start Date, modify the Site Name and Site Location within the APNs set forth below. Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer's prior written consent; *provided* that Seller shall be permitted to repower the Facility after the tenth (10th) Contract Year so long as Seller continues to be obligated to deliver Guaranteed Energy Production and Capacity Attributes associated with the Guaranteed Capacity during such repower; upon any such repower that changes the Installed Capacity, Seller shall deliver an updated Installed Capacity Certificate in the form of Exhibit G.

Site Name: SunZia Wind North and SunZia Wind South

Site Map:



Site Location: Lincoln, Torrance and San Miguel Counties, New Mexico

Technology: Utility Scale Wind Technology

Guaranteed Capacity:150 MW

Delivery Point: CAISO Scheduling Point-Intertie combination at PALOVRDE_ASR-APND and PVWEST, or an Alternative Delivery Point as mutually agreed by the Parties

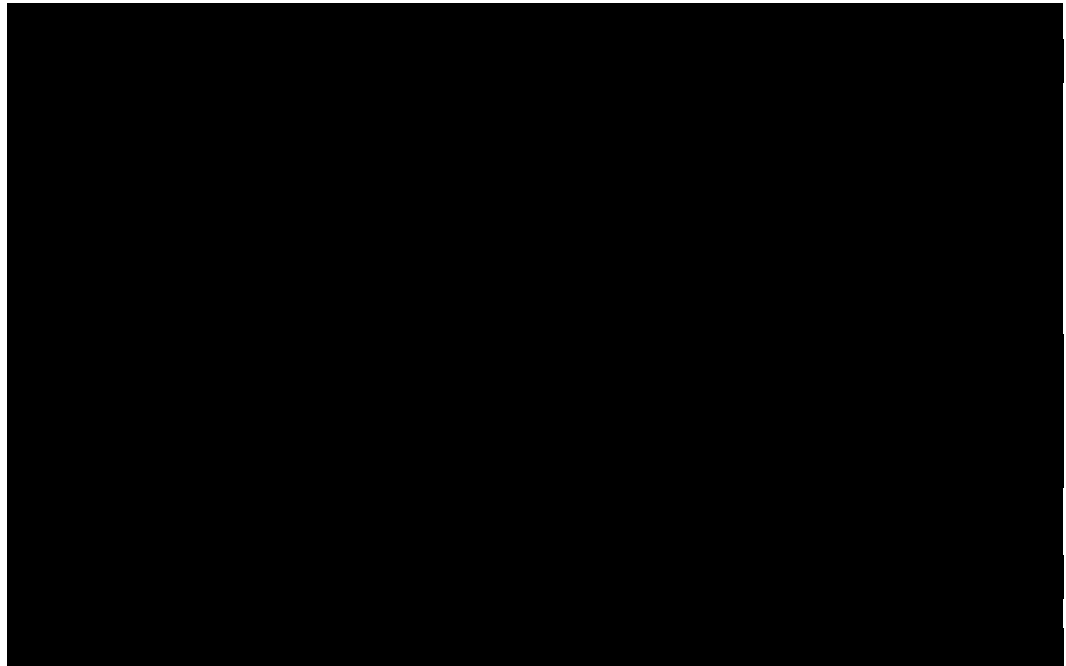
Participating Transmission Owner: SunZia Transmission, LLC

EXHIBIT B
FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.** “**Construction Start**” will occur upon Seller’s issuance of a full notice to proceed with the construction of the Facility following Seller’s execution of an EPC Contract related to the Facility. The date of Construction Start will be evidenced by Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit H hereto, and the date certified therein shall be the “**Construction Start Date.**” The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Expected Construction Start Date.
2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions in Section 2.3 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved.

The “**Commercial Operation Date**” shall be the later of (x) December 31, 2025, and (y) date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. For the avoidance of doubt, Seller may continue to increase the Installed Capacity of the Facility after the Commercial Operation Date and will notify Buyer from time to time of such increases by delivering a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto; when the Installed Capacity is complete, Seller shall include a statement to that effect in a Notice accompanying the final such certificate.



[REDACTED]

3. **Termination for Failure to Achieve Commercial Operation.** [REDACTED]

[REDACTED]

4. **Extension of the Guaranteed Dates.** The [REDACTED] the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the following delays:
- a. Up to [REDACTED] if a Force Majeure Event occurs;
 - b. Up to [REDACTED] due to delays caused by a Transmission Provider that are outside of the reasonable control of Seller;
 - c. Up to [REDACTED] due to a delay in the completion of the Interconnection Facilities or the commercial operation date of the SunZia Transmission Line (for reasons that are outside the reasonable control of Seller); or
 - d. a delay caused by Buyer breach or default of its obligations under this Agreement.

The cumulative extensions granted under clauses 4(a), 4(b) and 4(c) of the Development Cure Period shall not exceed [REDACTED] for any reason. The permitted extension granted under clause 4(d) shall be unlimited in duration. No extension shall be given if (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 requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller becomes aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

[REDACTED]

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, [REDACTED] of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to at least the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
6. **Limitation of Seller Liability Pre-Commercial Operation.** Notwithstanding anything herein to the contrary, Seller’s maximum aggregate liability for Delay Damages, the Damage Payment, and any other amounts incurred, due or payable under this Agreement prior to the Commercial Operation Date shall be limited to the amount of the Development Security.

EXHIBIT C
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any 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 month/quarter.
7. Forecast of activities scheduled for the current calendar month/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, and evidence of completion of Milestones, upon reasonable request from Buyer.
9. List of issues that could reasonably foreseeably 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 PTO's Transmission System and all other interconnection utility services.
13. Any other documentation, including copies of the Interconnection Agreement, transmission agreements and permits, as reasonably requested by Buyer, as such documentation may be redacted by Seller as necessary.

EXHIBIT D
FORM OF AVERAGE FORECAST OF ENERGY (MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table (i) is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement, and (ii) reflects expected P50 delivered volumes taking into account estimated X% physical losses from the Facility to the Delivery Point.

EXHIBIT E

ENERGY REPLACEMENT DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, and Seller elects to not provide Replacement Product, a liquidated damages (“**Energy Replacement Damages**”) payment shall be due from Seller to Buyer, calculated as follows:

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

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the LMP in the Day-Ahead Market at the Delivery Point for all of the hours in the Performance Measurement Period, *plus* (b) the lesser of (i) the REC Price or (ii) \$50.00/MWh

D = the Contract Price, in \$/MWh

E = the amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

“**Adjusted Energy Production**” shall mean the sum of the Delivered Energy *plus* Lost Output *plus* Deemed Delivered Energy in the first Contract Year of the current Performance Measurement Period, *plus* (ii) Delivered Energy *plus* Lost Output *plus* Deemed Delivered Energy in the second Contract Year of the Performance Measurement Period.

“**Lost Output**” means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer default, System Emergency and Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

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

Within sixty (60) days after each Contract Year, 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 Contract Year.

EXHIBIT F
FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("**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.

Engineer hereby certifies and represents to Buyer the following:

- (1) Wind turbines with a nameplate capacity at least equal to 95% of the Guaranteed Capacity have been installed at the Facility.
- (2) Testing and commissioning of each wind turbine referred to in paragraph (1) above has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.
- (3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner on _____[DATE]_____.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]

EXHIBIT G
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("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.

As of the date set forth below, [____] wind turbines with an aggregate nameplate capacity of [____], which is the Installed Capacity as of the date hereof, have been installed at the Facility, and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]
Exp. [DATE]

EXHIBIT H
FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Pattern Entity] ("**Seller**") to [____] ("**Buyer**") in accordance with the terms of that certain Renewable 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 EPC Contract related to the Facility was executed on _____;
- (2) the full notice to proceed with the construction of the Facility was issued on _____ (attached) (the "**Construction Start Date**");
- (3) the Construction Start Date has occurred;
- (4) the precise Site on which the Facility is located is, which must be within the boundaries 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 _____.

By: _____
Its: _____
Date: _____

**EXHIBIT I
FORM OF LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

DATE: [●]

BENEFICIARY: SAN DIEGO COMMUNITY POWER

APPLICANT: SUNZIA WIND POWERCO LLC

1088 SANSOME STREET, SAN FRANCISCO, CA 94111

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] ("ISSUER"), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ("LETTER OF CREDIT") IN FAVOR OF [] ("BENEFICIARY"), [BENEFICIARY ADDRESS], WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE "FACE AMOUNT").

WE ARE ADVISED THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS DEVELOPMENT SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2023 BETWEEN APPLICANT AND BENEFICIARY (THE "AGREEMENT").

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●] (THE "FINAL EXPIRATION DATE"), UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY TO [ADDRESS] OR (B) BY FACSIMILE TO FACSIMILE NUMBER [●] (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER [●] OR YOU CONFIRM BY EMAIL AT: [●]. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL AND FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN.

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF ILLINOIS ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('ISP98') AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF NEW YORK.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●] [ISSUING BANK'S NAME AND ADDRESS]

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: [BENEFICIARY], ATTN: [BENEFICIARY ADDRESS]. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL COSTS RELATED TO THIS LETTER OF CREDIT SHALL BE PAID BY THE APPLICANT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. AND CANADIAN GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXHIBIT "A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

[ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] TO [BENEFICIARY] ("LETTER OF CREDIT"); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I,_____, AN AUTHORIZED REPRESENTATIVE OF [BENEFICIARY], DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2023 (THE "AGREEMENT").

[CHOOSE ONLY ONE OF THE FOLLOWING]

- (1) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. \$_____ BECAUSE A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR OTHER OCCASION PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED.
- (2) 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 APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT , [BENEFICIARY] IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD _____, SUCH AMOUNT TO BE PAID TO [BENEFICIARY] BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE

FUNDS TO: (INSERT WIRE INSTRUCTIONS),WHICH, [____] CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: _____;
_____.

IN WITNESS WHEREOF, [BENEFICIARY] THROUGH ITS AUTHORIZED REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE THIS DAY OF , 20 _.

[____]

BY:_____

NAME:_____

TITLE:_____

EXHIBIT J FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and [_____] (together with its successors and permitted assigns, “Buyer” and together with Guarantor, the “Parties” and each a “Party”).

Recitals

A. Buyer and _____, a _____ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20____.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Sections 8.7 and/or 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed the sum of _____ Dollars (\$_____) plus reasonable costs incurred by Buyer in enforcing this Guaranty, if successful, up to Three-Hundred Thousand Dollars (\$300,000) for an aggregate maximum liability of _____ Dollars (\$_____) (the “Guarantee Limit”). The Parties understand and agree that any payment by Guarantor shall thereafter reduce the Guarantee Limit hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms

and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability,

including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the Party giving the notice. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection; WAIVER OF JURY TRIAL. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States sitting in the County of Los Angeles, California. 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 GUARANTY.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or

contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. DISPUTE RESOLUTION.

In the event of any dispute arising under this Guaranty, within ten (10) days following the receipt of a 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 Guaranty.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name:

Title:

BUYER:

[_____]

By: _____

Printed Name:

Title:

By: _____

Printed Name:

Title:

EXHIBIT K **NOTICES**

SUNZIA WIND POWERCO LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices: Street: 1088 Sansome St. City: San Francisco, CA Attn: General Counsel Phone: (415) 283-4000 Email: generalcounsel@patternenergy.com With a copy to: Attn: Pattern Origination Email: origination@patternenergy.com	All Notices: PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org, powercontracts@sdcommunitypower.org
Reference Numbers: <div style="background-color: black; width: 100%; height: 20px;"></div>	Reference Numbers: <div style="background-color: black; width: 100%; height: 20px;"></div>
Invoices: Attn: Pattern Energy Settlements Phone: (713) 308-4200 Email: AccountingSettlements@patternenergy.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Attn: Manager 24/7 Operations Control Center 888 Westheimer Road, Suite 213 Houston, TX 77006 Email: patternocc@patternenergy.com Realtimeoperations@patternenergy.com Phone: (713) 308-4242 Facsimile: (281) 694-2848	Scheduling: Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attn: Pattern Energy Settlements Phone: (713) 308-4200 Email: AccountingSettlements@patternenergy.com	Confirmations: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Pattern Energy Settlements Phone: (713) 308-4200 Email: AccountingSettlements@patternenergy.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org



Wire Transfer: 	Wire Transfer: 
Emergency Contact: Attn: 24/7 Operations Control Center Phone: (713) 308-4242 Email: patternocc@patternenergy.com	With additional Notices of an Event of Default to: Best, Best & Krieger Attn: Ryan Barron, General Counsel 655 West Broadway, 15th Floor San Diego, CA 92101 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com
	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

EXHIBIT L
OPERATING RESTRICTIONS

Operating restrictions of the Facility for Market Curtailment Periods are as follows:

- Interconnection Capacity (Maximum Injection Amount): 3,000 MW
- Minimum operating capacity: 0.0 MW
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: To be provided by Seller upon Notice to Buyer prior to Commercial Operation
- Minimum Down Time: N/A



**INTERNATIONAL
BROTHERHOOD
OF ELECTRICAL
WORKERS®**

900 Seventh Street, NW
Washington, DC 20001
202.833.7000
www.ibew.org

KENNETH W. COOPER
International President

PAUL A. NOBLE
International
Secretary-Treasurer

September 14, 2023

VIA U.S. MAIL AND/OR EMAIL

**Re: IBEW Support for the SunZia Clean Energy Transmission and
Wind Infrastructure Project**

To Whom It May Concern:

On behalf of the more than 820,000 active and retired members of the International Brotherhood of Electrical Workers (IBEW), I write in full support of the SunZia Clean Energy Transmission and Wind Infrastructure Project. The IBEW is committed to supporting projects that create job and training opportunities like SunZia.

Pattern Energy and its contractor(s) are ensuring that a highly qualified, skilled, and trained labor workforce is employed on SunZia, and IBEW members look forward to contributing to the success of the project. Building and maintaining a highly qualified workforce is extremely important to build the clean energy infrastructure required to meet the nation's carbon reduction goals for future generations.

The IBEW asks that you support the SunZia Clean Energy Infrastructure Project to create highly skilled jobs with family-sustaining wages as we build a clean and resilient electrical grid.

Sincerely yours,

Kenneth W. Cooper
International President

KWC:mea



New Mexico Building and Construction Trades Council

411 Arizona SE
Albuquerque, New Mexico
87108

To Whom It May Concern:

As the Executive Director of the New Mexico Building Construction & Trades Council (NMBCTC), *I am writing to express our organization's full support of the proposed SunZia Southwest Transmission Project and the preferred alternate route outlined in the recent EIS.*

For years, NMBCTC has stood in strong support of renewable energy and transmission development and highlighted the diverse opportunities these projects provide—from job creation for our construction trades to substantial revenue generation for local communities. Renewable energy development has the unique potential to create high-paying, full-time union positions for local labor forces. Union jobs offer the opportunity to provide workforce training to these upcoming positions, which will be critical to building up our local workforce and preparing our communities to take full advantage of a new, booming renewable energy job market.

Completing a project of this scale will have significant long-term benefits for our workforce across the region, but project developers also stand to gain from hiring union labor. These benefits include safety, efficiency, and reduced costs thanks to the training that our union workers receive.

Renewable energy development had already proven to be a source of reliable work and revenue to local communities, as evidenced by the continued advancement during the early stages of the COVID-19 pandemic when most workforces were stalled, and wind and solar development continued. Our workforces are ready to take advantage of these vast opportunities, and for this reason, the **NMBCTC supports the Bureau of Land Management's thorough environmental review and the preferred alternative route identified in the draft EIS for the SunZia project.**

Sincerely,

Brian Condit

Executive Director

New Mexico Building Construction & Trades Council

BAC 3

HFIW 76

IABSOIW 495

IABSOIW 847

IBB 4

IBB 627

IBEW 583

IBEW 611

IBT 492

IUEC 131

IUOE 953

IUPAT 823

LUINA 16

OPCMIA 254

SMART 49

Sprinklerfitters 669

UA 412

UURWAW 123

