

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager
Shawn Marshall, LEAN Energy

Subject: Approval of Master Power Purchase Agreement between SMUD and VCEA for the recontracting of renewable and clean power to VCEA for regulatory compliance purposes.

Date: May 10, 2018

Recommendation

Approve attached Master Power Purchase Agreement (MPPA) between VCEA and its wholesale energy services provider, Sacramento Municipal Utility District (SMUD), to enable the appropriate transfer of the title to renewable and clean power procured by SMUD for VCEA's regulatory compliance purposes.

Background

In September and October 2017, the VCEA Board approved the professional services contract with SMUD that includes a defined set of operational services to be provided by SMUD over a five-year term. Task Order 3 of the professional services contract defines the provision of wholesale energy and power services that SMUD will undertake on behalf of VCEA. A key component of Task Order 3 relates to the various steps required for power contracting, which SMUD is currently doing on VCEA's behalf. In order to properly comply with various regulatory reporting requirements, it is necessary to ensure that legal title to the renewable power and clean power is transferred (or "recontracted") to VCEA for any requisite compliance purposes.

Analysis & Discussion

The attached MPPA, as drafted, serves to enable transactions between SMUD and VCEA for purposes of providing adequate and necessary documentation for VCEA's compliance with regulatory showings requiring VCEA to demonstrate ownership of power, including but not limited to California Public Utilities Commission Renewables Portfolio Standard (RPS) compliance reporting. The Agreement is based on an industry-standard power purchase contract provided by the Western States Power Pool (WSPP) which is used by many entities to transact power in the Western System Coordinating Council area. The Agreement will serve as the contract mechanism by which renewable and clean power ownership will be transferred from SMUD to VCEA. This Agreement by itself is an enabling agreement and provides standard terms and conditions for subsequent "confirmations" or "confirms" that will be written covering the ownership transfer of each renewable power transaction between SMUD and

VCEA. These confirmations will be executed by the General Manager under existing delegation authority, and under additional future Board delegation and authorization, as required, for any upcoming VCEA renewable and clean power purchases.

The Agreement has been reviewed by VCEA staff and consultants as well as VCEA's legal counsel for regulatory and energy matters, Keyes & Fox. The Agreement contains specific language indicating in the event of any conflicting terms between the Agreement and the MPPA, the terms of the MPPA shall apply. The Agreement will not expose VCEA to additional costs or operational risk.

Attachments

1. Resolution
2. WSPP Power Purchase Agreement between SMUD and VCEA

VALLEY CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2018- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING A MASTER POWER PURCHASE AGREEMENT (MPPA) BETWEEN SMUD AND VCEA FOR THE RECONTRACTING OF RENEWABLE AND CLEAN POWER TO VCEA FOR REGULATORY COMPLIANCE PURPOSES.

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, on August 31, 2017, the VCEA Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCEA staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board; and

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCEA to provide a range of CCA operational services; and

WHEREAS, On November 16, 2017 the VCEA Board approved Task Order 3 to provide Wholesale Energy Services consistent with the SMUD proposal and VCEA Board direction; and

WHEREAS, as a component of the services provided in Task Order 3, SMUD has begun power contracting on VCEA’s behalf including procurement of renewable and clean energy sources; and

WHEREAS, in order to comply with California Public Utility Commission reporting requirements including, among others, the State’s Renewable Portfolio Standard, VCEA must demonstrate clear title to its renewable and clean power sources, thus necessitating a legal mechanism for the transfer of power contracts to VCEA’s ownership; and

WHEREAS, the MPPA, as drafted, serves to enable transactions between SMUD and VCEA for purposes of providing adequate and necessary documentation for VCEA’s regulatory compliance requiring VCEA to demonstrate ownership of power; and

WHEREAS, The MPPA is based on an industry-standard power purchase contract provided by the Western States Power Pool (WSPP) which is used by many entities to transact power in the Western System Coordinating Council area; and

WHEREAS, The MPPA is an enabling agreement and provides standard terms and conditions for subsequent “confirmations” or “confirms” that will be written covering the ownership transfer of

each renewable power transaction between SMUD and VCEA. These confirmations will be executed by the General Manager under existing delegation of authority, and under additional future Board delegation and authorization, as required, for any upcoming VCEA renewable and clean power purchases.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby directed to finalize the Master Power Purchase Agreement with SMUD, for signature by the VCEA Board Chair.
2. The Chair of the Board is hereby authorized to approve and execute on behalf of VCEA the Master Power Purchase Agreement in substantial conformance with the attached Master Power Purchase Agreement under the terms set forth in this Resolution.

ADOPTED, this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lucas Frerichs, Chair

Secretary

Approved as to form:

Interim VCEA Counsel

EXHIBIT A - Master Power Purchase Agreement between VCEA and SMUD

EXHIBIT A

Master Power Purchase Agreement

MASTER POWER PURCHASE AGREEMENT

BETWEEN

**SACRAMENTO MUNICIPAL UTILITY DISTRICT (SMUD)
AND VALLEY CLEAN ENERGY ALLIANCE (VCEA)**

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1. PARTIES:

The Parties to this Master Power Purchase Agreement (hereinafter referred to as "Agreement") are the Sacramento Municipal Utility District (SMUD) and Valley Clean Energy Alliance (VCEA), hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

2. RECITALS

- 2.1 This Agreement is modeled after the Western Systems Power Pool (WSPP) master agreement and serves as a master agreement to facilitate transaction confirmations of capacity and/or energy between the Parties.
- 2.2 SMUD is a member of WSPP, and procures capacity and/or energy under the WSPP master agreement, both for its own utility purposes and for the purposes of VCEA.
- 2.2 This Agreement contains certain provisions that may not be applicable to VCEA/SMUD back-to-back transactions, but are included nevertheless for consistency with the obligations that may apply to SMUD's purchases from Originating Suppliers under the WSPP master agreement.
- 2.3 Under the Master Professional Services Agreement dated October 25, 2017, and Task Order 3 dated December 21, 2017 between VCEA and SMUD ("CCA Agreement"), and any amendments to those agreements, SMUD shall provide wholesale energy services, including the purchase of capacity and/or energy to serve VCEA's customers. The purchase of this capacity and/or energy is done contractually between SMUD and Originating Suppliers.

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- 2.4 Under the CCA Agreement, VCEA shall reimburse SMUD for the costs of such capacity and/or energy, and this Agreement is not intended to change or amend any obligations under the CCA Agreement.
- 2.5 This Agreement serves to enable confirmation of renewable and or other clean power transactions between SMUD and VCEA to provide adequate documentation to demonstrate VCEA's ownership and control of various renewable and or clean power resources to facilitate compliance with regulatory submittals requiring VCEA to demonstrate ownership of such power supplies, including but not limited to California Public Utilities Commission Renewables Portfolio Standard compliance reporting.
- 2.6 The intent of this Agreement is to be used only with regard to renewable and clean power transactions and only when demonstration of VCEA ownership and control of such resources is required for regulatory compliance purposes. This Agreement is not intended to be used to undertake or memorialize other conventional power transactions/activities undertaken or performed pursuant to the SMUD/VCEA CCA Agreement and Task Order 3 to the CCA Agreement.
- 2.7 Both Parties to this Agreement acknowledge and understand that any transactions and corresponding Confirmations under this Agreement are subject to the mutual agreement of the Parties.

3. AGREEMENT:

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

4. DEFINITIONS:

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

Agreement: This Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the Seller and the Purchaser have their principal places of business in Canada, Canadian holidays shall apply and United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall apply.

California ISO: The California Independent System Operator Corporation or any successor organization.

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32 or Electronic Platform Confirmations.

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Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and Confirmation.

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Control Area: An electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.

Costs: As defined in Section 22.3 of this Agreement.

Damages Settlement Transaction: A transaction where, after non-performance under a Confirmation, the Parties enter into a second transaction for the purpose of finally settling damages incurred by the Performing Party due to non-performance of such Confirmation.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation.

Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.

Electronic Platform Confirmation: agreed terms and conditions of a transaction, which agreement (a) was made through electronic entry of information and terms on, and in a manner that complies with the procedures of, the applicable electronic trading platform or exchange, (b) includes, at a minimum, the Standard Confirmation Provisions, and (c) is available to either Party for retrieval from the applicable electronic trading platform or exchange in printable or electronic form.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

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Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

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Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Originating Supplier: Any third Party that SMUD contracts with in order to provide capacity and/or energy to VCEA as part of the wholesale energy services under the CCA Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to

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sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation.

Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such option by the date agreed to by the Parties in the Confirmation.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy,

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as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in accordance with the Agreement, including Service Schedule B, and any applicable Confirmation.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

WSPP Homepage: WSPP's internet web site, www.wspp.org.

5. TERM, TERMINATION AND WITHDRAWAL:

5.1 This Agreement shall remain in effect until the termination or expiration of the CCA Agreement between VCEA and SMUD.

5.2 As of the effective date of any termination or expiration of the CCA Agreement, each Party shall have no further rights or obligations under this Agreement, except with respect to each then outstanding Confirmation, and all outstanding rights and obligations arising under any such Confirmation and this Agreement shall remain in full force and effect as if the termination had not occurred.

5.3 Except as provided for in Section 5.2, after termination, all rights to services provided under this Agreement shall cease, and no Party shall claim or assert any continuing right to such services thereunder. Except as provided in Section 5.2, no Party shall be required to provide services based in whole or in part on the

existence of this Agreement or on the provision of services under this Agreement beyond the termination date.

6. SERVICE SCHEDULES

6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through E respectively, for Economy Energy Service, Unit Commitment Service, Firm Capacity/Energy Sale or Exchange Service, Operating Reserve – Spinning and Operating Reserve – Supplemental, and Energy Imbalance and Generator Imbalance Power, and Service Schedule R for Renewable Energy Certificate Transactions With And Without Energy, are incorporated into and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change in the rates and charges, classification, service, terms, or conditions affecting transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Additional Service Schedules or amendments to existing Service Schedules, if any, shall be adopted only by amendment of this Agreement.

6.2 **[RESERVED]**

7. ADMINISTRATION:

SMUD has executed a WSPP Master Agreement to enable Confirmation both for its utility procurement purposes and power procurement for VCEA's purposes. VCEA acknowledges that this Agreement serves as a master agreement to enable VCEA to

purchase power from SMUD under Confirmations for regulatory compliance. Under the CCA Agreement, SMUD has the obligation to provide wholesale energy services, which includes the purchase of energy and/or capacity to serve VCEA's power requirements. This Agreement does not change or otherwise alter that obligation; it serves as a contract vehicle for VCEA's purchase of the energy and/or capacity from SMUD.

8. [RESERVED]

9. PAYMENTS:

The accounting, billing, and disputes processes for transactions under this Agreement shall be made pursuant to the CCA Agreement.

10. UNCONTROLLABLE FORCES:

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation to the extent that a failure to perform its obligations under this Agreement or any such Confirmation is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance 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 avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or

disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of obtaining capacity and/or energy; or (ii) Purchaser’s inability due to the price of the capacity and/or energy, to use or resell such capacity and/or energy. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Where the entity providing transmission services for transactions under this Agreement and Confirmation interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 of this Agreement only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction in the Confirmation, (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement and Confirmation, and (c) the entity providing transmission

service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract. There shall be no due diligence obligation associated with interruptions under this subparagraph (1).

- (2) If the Parties did not agree on the transmission path for a transaction in the Confirmation, an interruption in transmission service shall be considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the Agreement and Confirmation, (b) the entity providing transmission service curtailed or interrupted such transmission service, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point, alternate transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of this Agreement of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

11. WAIVERS:

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

12. NOTICES:

12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, or overnight delivery (with record of receipt).

12.2 Notices and requests of a routine nature applicable to delivery or receipt of capacity and/or energy shall be given in such manner as the Parties to a transaction shall prescribe in a Confirmation or otherwise; provided, however, if the Parties have not prescribed a method of providing such routine notices, then the procedures in Section 12.1 shall apply.

13. EFFECT OF APPROVALS:

13.1 This Agreement and all Confirmations are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement or any Confirmation shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.

13.2 Nothing in this Agreement or any Confirmation is intended to restrict the authority of the Bonneville Power Administration (BPA) pursuant to applicable statutory authority to use its existing wholesale power and transmission rates or to adopt new rates, rate schedules, or general rate schedule provisions for application

under this Agreement and obtain interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule.

13.3 Nothing contained in this Agreement or any Confirmation shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement or any Confirmation.

14. TRANSFER OF INTEREST IN AGREEMENT:

With regard to the transfer of the rights and obligations of any Party associated with transactions under this Agreement and Confirmation(s), neither Party to such transactions may assign such rights or obligations unless the other Party provides its prior written consent which shall not be unreasonably withheld; any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation(s) (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation(s), and no assignment or transfer of any rights under this Agreement or any Confirmation(s) shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement and any Confirmation(s) (where applicable). The execution

of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

15. SEVERABILITY:

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation(s).

16. CONTROL AREA:

Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.

17. RELATIONSHIP OF PARTIES:

17.1 Nothing contained in this Agreement or in any Confirmation shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be

individually responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation.

17.2 All rights and obligations of the Parties under this Agreement are several and are not joint.

18. NO DEDICATION OF FACILITIES:

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19. NO RETAIL SERVICES:

Except as explicitly provided for in the CCA Agreement, nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to retail customers of any Party.

20. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

21. LIABILITY AND DAMAGES:

21.1 This Agreement contains express remedies and measures of damages in Sections 21.3 and 22 for non-performance or default. This Agreement also contains additional remedies to enforce payment of monies due and to enforce terms of the Agreement and applicable Confirmations in Section 21.2.

ALL OTHER DAMAGES OR REMEDIES, EXCEPT THOSE EXPRESSLY PROVIDED FOR IN THE CCA AGREEMENT, ARE HEREBY WAIVED. Therefore, except as provided in Sections 21.3 and 22 or the CCA Agreement, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation), including any negligence arising hereunder. Any liability or damages incurred by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this

Agreement and without exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in any forum having competent jurisdiction. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.

21.3 The following damages provision shall apply to all transactions under this Agreement. The damages under this Section 21.3 apply to a Party's failure to deliver or receive (or make available in the case of capacity) capacity and/or energy in violation of the terms of the Agreement and any Confirmation. The Contract Quantity and Contract Price referred to in this Section 21.3 are part of the Agreement between the Parties for which damages are being calculated under this Section.

(a) If either Party fails to deliver or receive (or make available in the case of capacity), as the case may be, the quantities of capacity and/or energy due under the Agreement and any Confirmation (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other Party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

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- (1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Resale Price (Contract Price - Resale Price) and the amount by which the quantity provided to the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).
- (2) If the amount the Seller scheduled or delivered (or made available in the case of capacity) in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity provided by the Seller was less than the hourly Contract

Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).

- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission or FERC accepted or approved tariffs for regional organizations due to the non-performance.
- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation if the Parties agreed to revise the billing period in Section 9.
- (5) In the event (a) two Parties entered into two or more Confirmations in which the same Party is the Purchaser and the other Party is the Seller, (b) deliveries under two or more of such Confirmations are to occur, in whole or in part, on the same date and hour, and at the same delivery point, and (c) as to such date, hour, and delivery point, and with respect to one or more of such Confirmations, a

Party is a Non-Performing Party (for purposes of this Section 21.3(a)(5), each such instance of non-performance, a “non-performed transaction”), then, as set out in this Section 21.3(a)(5), each non-performed transaction shall be identified to a Confirmation, and the Contract Price of the Confirmation to which the non-performed transaction is identified, and the Contract Quantity of the non-performed transaction, shall be applied to the calculation of amounts due under Section 21.3(a)(1) through (3), as applicable.

The Parties in good faith shall seek to agree to the identification of each non-performed transaction to a Confirmation.

Each non-performed transaction not identified to a Confirmation by agreement, and any megawatt hours that are not fully accounted for by such identification, shall be identified to Confirmation(s) as follows:

- (i) The Performing Party in good faith shall determine whether each Confirmation is real-time, day-ahead, or forward; all Confirmations that are not real-time or day-ahead shall be deemed forward Confirmations.
- (ii) The Performing Party in good faith shall determine whether each non-performed transaction is real-time, day-ahead, or forward; all non-performed transactions that are not real-time or day-ahead shall be deemed forward non-performed transactions.

- (iii) The Performing Party shall:
 - (x) identify real-time non-performed transactions to real-time Confirmations, provided, that if the megawatt hours of real-time non-performed transactions exceed the megawatt hours of real-time Confirmations, then such excess megawatt hours shall be identified to day-ahead Confirmations and any excess megawatt hours remaining after such identification to day-ahead Confirmations shall be identified to forward Confirmations.
 - (y) identify day-ahead non-performed transactions to day-ahead Confirmations, provided, that if the megawatt hours of day-ahead non-performed transactions exceed the megawatt hours of day-ahead Confirmations, then such excess megawatt hours shall be identified to forward Confirmations.
 - (z) identify all remaining non-performed transactions to forward Confirmations.

The Performing Party, in its billing for amounts due under Section 21.3(a)(1) through (3), shall set out a detailed explanation of each applicable determination under parts (i), (ii), and (iii) of this Section 21.3(a)(5), and state the resulting Contract Quantity and Contract Price, and any amounts associated with each such determination under Section 21.3(a)(3).

- (b) The Parties agree that amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.
- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.
- (e) In the event non-performance of a transaction is accounted for by means of a Damages Settlement Transaction and the Damages Settlement Transaction is performed, then no damages shall be calculated or due under § 21.3(a) with respect to the non-performed transaction. Neither Party shall be required to enter into a Damages Settlement Transaction.

**22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND
CONFIRMATIONS:**

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-

Defaulting Party under the Agreement or any Confirmation pursuant to Section 27 of this Agreement or any substitute or modified provision in any Confirmation; *provided*, however, that Seller shall be deemed to be in compliance with this Section 22.1(d) so long as Seller is in compliance with the Credit Support Service requirements applicable to Seller in Section 1.13 of Task Order 3, dated December 21, 2017 between VCEA and SMUD.

22.2 REMEDIES FOR EVENTS OF DEFAULT

22.2(a) If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance of transactions under this Agreement; provided, however, (i) in no event shall any such suspension continue for longer than ten (10) Business Days; (ii) such suspension must include all transactions under this Agreement in effect as of the date of the suspension between the Defaulting Party and the Non-Defaulting Party; and (iii) such suspension is available only once for each default. This ten (10) day suspension period shall not affect in any way the thirty (30) day period for exercising a right of termination under Section 22.2(b). The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of or waiver by the Non-Defaulting Party of the applicable Event of Default. If the Non-

Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the ten (10) Business Day period specified above, it may do so only by providing at least twenty-four (24) hours written notice to the Defaulting Party before the suspension may be terminated.

22.2(b) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Section 22.1(c). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

If the Non-Defaulting Party elects to terminate under this Section, it shall be required to terminate all transactions between the Parties under the Agreement at the same time. Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that

in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions. The payment associated with termination ("Termination Payment") shall be calculated in accordance with this Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent

quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity

that matches the average remaining term of the Terminated Transactions;
and

- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value Rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value Rate from the time notice of termination was received until the Defaulting Party receives payment.
- (d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.
- (e) (i) If the Non-Defaulting Party owes the Defaulting Party monies

under this Section 22.3, then notwithstanding the three Business Day payment requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section 22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

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- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even after termination of any contract or transaction.
- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three (3) Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.
- (f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1 of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment

calculated by the Non-Defaulting Party within three (3) Business Days (except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply) of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.

- (g) For purposes of this Section 22.3:
- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
 - (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
 - (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated with Terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

23. OTHER AGREEMENTS:

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among the Parties. For any conflict or inconsistency that arises between this Agreement and the CCA Agreement, including any form of dispute notice or remedy, the CCA Agreement shall prevail.

24. GOVERNING LAW:

This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

25. JUDGMENTS AND DETERMINATIONS:

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment

of a Party, that Party's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

26. COMPLETE AGREEMENT:

This Agreement and the Confirmation(s), shall constitute the full and complete agreement of the Parties with respect to a transaction, except as provided under Section 32.4 and the Master Professional Services Agreement dated October 25, 2017, and Task Order 3 dated December 21, 2017 between VCEA and SMUD.

27. CREDITWORTHINESS:

All requirements for creditworthiness, security, and assurance are contained in the CCA Agreement.

28. NETTING:

28.1 The Parties may by separate agreement either through a Confirmation or some other agreement set out specific terms relating to the implementation of netting in addition to or in lieu of Exhibit A.

28.3 Each Party reserves to itself all rights, set offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement and any applicable Confirmation.

29. TAXES:

The Contract Price for all transactions under this Agreement shall include full reimbursement for taxes, and the provisions of the CCA Agreement regarding payments and taxes shall control.

30. CONFIDENTIALITY:

30.1 The terms of any transaction under this Agreement or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar

mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

- 30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

31. [RESERVED]

32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:

32.1 General

32.1.1 A Confirmation shall include, at a minimum, the Standard Confirmation Provisions. (See Exhibit C for a sample). Subject to the limitations in Section 32.2 (Standard Confirmation Provisions) and Section 32.3 (Non-Standard Confirmation Provisions), the Confirmation shall be made in writing by a Documentary Writing or an Electronic Writing.

32.1.2 Pursuant to the provisions of this Section 32, the Parties to a transaction under this Agreement may agree to modify any term of this Agreement

which applies to such transaction, such agreement to be stated in a Confirmation or Confirmations.

32.2 Process For Confirming Standard Confirmation Provisions.

32.2.1 Confirmation of Standard Confirmation Provisions For Transactions of Less Than One Week in Duration.

Confirmation for Standard Confirmation Provisions applicable to transactions of less than one week in duration may be through:

- (i) a Documentary Writing (including a Confirmation which is not executed by both Parties but which is binding under Section 32.2.3) or
- (ii) an Electronic Writing.

Notwithstanding the foregoing sentence, with respect to a transaction of less than one week in duration as agreed in an Electronic Writing and that is to commence within one week of that agreement, a subsequent proposed confirming Documentary Writing under Section 32.2.3 shall not vary the terms of the Electronic Writing unless the Documentary Writing is executed by both Parties.

32.2.2 Standard Confirmation Provisions For Transactions of One Week or More in Duration.

Written confirmation shall be required for all Standard Confirmation Provisions for transactions of one week or more in duration. Such written confirmation may be made by a Documentary Writing

executed by both Parties or a Documentary Writing not executed by both Parties but which is binding under Section 32.2.3.

32.2.3 Written Confirmation Process for Standard Confirmation Provisions.

The Seller shall provide a proposed Documentary Writing containing the proposed Standard Confirmation Provisions.

32.3 Process for Confirming Non-Standard Confirmation Provisions.

32.3.1 Non-Standard Confirmation Provisions for Transactions of Less Than One Week in Duration. Confirmation for Non-Standard Confirmation Provisions for a transaction of less than one week in duration only may be through: (i) an Electronic Writing; or (ii) in a Documentary Writing executed by both Parties.

32.3.2 Non-Standard Confirmation Provisions for Transactions of One Week or More in Duration. Confirmation for Non-Standard Confirmation Provisions for transactions of one week or more only shall be through a Documentary Writing executed by both Parties.

32.3.3 Agreement is a Default Agreement.

If the Parties to a transaction (i) do not reach agreement on any proposed Non-Standard Confirmation Provision and (ii) do not confirm it under Section 32.3.1 or 32.3.2, as applicable, then the term or terms of the Agreement, which the Parties could not reach agreement to modify or change or which are not considered modified pursuant to this Section 32.3, shall apply to the transaction.

32.4 Prior Discussions And Statements

- 32.4.1 A Confirmation under Section 32.2 and/or 32.3, shall, together with this Agreement, be an integrated contract with respect to the transaction, shall supersede all discussions and negotiations with respect thereto, and are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement unless there is clear and convincing evidence of a mutual mistake in the Confirmation.
- 32.5 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction, on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed.
- 32.6 In the event of a conflict between a binding and effective Confirmation and this Agreement, the Confirmation shall govern.
- 32.7 The Seller shall not be required to file any Confirmation with FERC.
- 32.8 Other Products and Service Levels: The Parties may apply this Agreement and make a Confirmation with respect to a product/service level defined under any other document or form of agreement (e.g., the California ISO Tariff, the ERCOT agreement or the EEI agreement). The confirmation process set forth in Section 32.3 shall apply to any such Confirmation. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction consistent with Section 32.3, the transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions, (2) force majeure/uncontrollable force definitions, and (3) other terms

as mutually agreed shall have the meaning ascribed to them in the different agreement or in the applicable Confirmation.

32.9 Reserved.

32.10 The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement (a “master confirmation agreement”), which agreement shall be considered part of each Confirmation between the Parties and shall apply to all transactions entered into between the two Parties unless the Parties specifically agree to override such changes for a particular transaction consistent with the procedure in Section 32.2 or 32.3, whichever is applicable.

33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations.

THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

34. DISPUTE RESOLUTION:

The dispute resolution provisions of the CCA Agreement apply to this Agreement and any Confirmations.

35. FORWARD CONTRACTS:

The Parties acknowledge and agree that all transactions under this Agreement and any applicable Confirmation(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The

Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

36. TRADE OPTION EXEMPTION

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exemption, 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

37. ADDITIONAL REPRESENTATIONS AND WARRANTIES:

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into this Agreement and any applicable Confirmation does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a

party and that this Agreement and applicable Confirmation, constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

38. FLOATING PRICES:

38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a “Floating Price”), the Parties shall specify the “Floating Price” to be used to calculate the amounts in a Confirmation due Seller for that transaction.

38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. SMUD shall develop the Floating Price with the Originating Supplier(s) affected by the Market Disruption Event.

“Determination Period” means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

“Market Disruption Event” means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties):

- (a) the failure of the index to announce or publish information necessary for determining the Floating Price;
- (b) the failure of trading to commence or the

permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

“Trading Day” means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

- 38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.
- 38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

39. AMENDMENT:

39.1 This Agreement may be amended upon mutual agreement of the Parties.

39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective date of the amendment. Preexisting agreements and transactions shall operate under the version of the Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.

39.3 An agreement modifying this Agreement or a Confirmation for a transaction needs no consideration to be binding.

40. EXECUTION BY COUNTERPARTS:

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

41. WITNESS:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the date of signature below.

Valley Clean Energy Alliance

By: _____
Name of signing official:
Title:
Date:

Sacramento Municipal Utility District

By: _____
Name of signing official:
Title:
Date:

EXHIBIT A

NETTING

The Parties may execute this Exhibit A to the Agreement to facilitate net payments for transactions under the Agreement and the applicable Confirmation(s). Executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement and Confirmation(s), then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under Agreement and the applicable Confirmation(s) shall be offset against each other or set off or recouped therefrom.

Name of Authorized Representative

Effective Date for Netting

Name of Entity

Signature of Authorized
Representative

Date of Execution

EXHIBIT B

RESERVED

EXHIBIT C
SAMPLE FORM FOR CONFIRMATION

1. Transaction Specific Agreements

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the Agreement as it is supplemented and modified below:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: From ______ To ______
- (d) Schedule (Days and Hours): _____
- (e) Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Service (Check as Applicable)
 - Service Schedule A _____
 - Service Schedule B _____
 - Service Schedule C _____
 - Physically-Settled Option Service Schedule B _____
 - Physically-Settled Option Service Schedule C _____
 - Other products per Section 32.6 _____ **[Describe Product]**
- (h) Contract Quantity: _____ Total MWhrs.
- (i) Contract or Strike Price: _____
- (j) Transmission Path for the Transaction (If Applicable): _____
- (k) Date of Agreement if different: _____
- (l) Additional Information for Physically-Settled Options
 - (i) Option Type: *Put* _____ *Call* _____
 - (ii) Option Style: _____
 - (iii) Exercise Date or Period: _____
 - (iv) Premium: _____
 - (v) Premium Payment Date: _____
 - (vi) Method for providing notice of exercise _____
- (m) Special Terms and Exceptions:
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

Name of Purchaser	Name of Seller
Authorized Signature for Purchaser	Authorized Signature for Seller
Date	Date

SERVICE SCHEDULE A

ECONOMY ENERGY SERVICE

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and the associated hourly sale/purchase price for the next Business Day, plus the weekend and holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be

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based on amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.6 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement.

A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

SERVICE SCHEDULE B
UNIT COMMITMENT SERVICE

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in

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Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has

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filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,
- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the unit, unless otherwise agreed by the schedulers,
- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission

capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

B-4 BILLING AND PAYMENT PROVISIONS:

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

B-5 TERMINATION PROVISION:

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

SERVICE SCHEDULE C
FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

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C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.6 Except as provided for in Section C-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than

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reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

SERVICE SCHEDULE D

OPERATING RESERVE – SPINNING

AND

OPERATING RESERVE – SUPPLEMENTAL

D-1 PURPOSE

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides Operating Reserve – Spinning and/or Operating Reserve – Supplemental, as specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or to resell as ancillary services under an OATT.

D-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary and Applicable Standards. In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule.

D-2.1.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and of any Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group applicable to the Seller’s provision and the Designated Authority’s use of Operating Reserve – Spinning or Operating Reserve – Supplemental, in force as of the date of the Confirmation.

D-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

D-2.1.3 “Designated Authority” means the Regional Reliability Organization, Balancing

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Authority, Reserve Sharing Group or other entity designated in the Confirmation, which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be the same entity or two different entities. If the Designated Authority and the Purchaser are the same entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.1.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, or 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 in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.1.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards.

D-2.1.6 “Non-Performance” with respect to Seller shall have the meaning given in Section D-4.1, and with respect to Purchaser, the meaning given in Section D-

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4.2.

D-2.1.7 “OATT” refers to the Open Access Transmission Tariff of the Designated Authority or, if the Designated Authority has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

D-2.1.8 “OATT Schedule” refers to schedule 5 or 6 of the OATT for sale of ancillary services, or any other schedule under an OATT for sale of Operating Reserve – Spinning or Operating Reserve – Supplemental.

D-2.1.9 “Operating Reserve – Spinning” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 5 or similar schedule under an OATT.

D-2.1.10 “Operating Reserve – Supplemental” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 6 or similar schedule under an OATT.

D-2.2 The following rules apply to this Service Schedule.

D-2.2.1 In the event of inconsistency between the definition in the NERC Glossary of Terms and the Applicable Standards, the Applicable Standards shall control.

D-2.2.2 No product sold or transferred under this Service Schedule D shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

D-2.2.3 The OATT, OATT Schedules, regulations of the FERC, the NERC Glossary, and Applicable Standards shall be applied in their forms as of the date of the Confirmation.

D-3 TERMS OF SERVICE

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D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Operating Reserve – Spinning and/or Operating Reserve – Supplemental, to which the Confirmation applies;
- (b) Identification of the Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;
- (c) The Standard Confirmation Provisions, as applicable;
- (d) Any additional attributes of the Operating Reserve – Spinning or Operating Reserve – Supplemental, as the Parties may agree;
- (e) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (f) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of any arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser.

D-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

D-3.3 Seller shall provide Operating Reserve – Spinning or Operating Reserve – Supplemental, as applicable, to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation as are consistent with the Applicable Standards. Seller shall provide such service from one or more generation resources or Demand Response Resources. Such resources must be physically and

operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by, the Applicable Standards for the applicable service, and as required to conform to any additional attributes stated in the Confirmation.

D-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

D-3.4.1 Seller shall provide capacity and deliver energy associated with Operating Reserve – Spinning or Operating Reserve – Supplemental, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.4.2.

D-3.4.2 The Designated Authority shall use the capacity and energy provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's own obligations pertaining to Operating Reserve – Spinning and Operating Reserve – Supplemental, as specified in the Applicable Standards or the Confirmation. Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is required to enable it to respond to a contingency or other event for which the service specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.5 Inspection and Audit. The Purchaser and Designated Authority shall have the right, to

conduct such inspections and audits of Seller's records as are reasonable to assure that the Seller's provision of services under this Service Schedule and Confirmation conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct inspections and audits of the Designated Authority's records as reasonably required to assure that any use by the Designated Authority of the services under this Service Schedule and Confirmation conformed to Section D-3.4.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, provisions concerning confidentiality or limiting inspection to an agreed third-party auditor.

D-3.6 Regulatory Matters – Rate Caps

D-3.6.1 The price for Operating Reserve – Spinning or Operating Reserve – Supplemental shall not be subject to the rate caps specified in Section D-3.6.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

D-3.6.2 Except as provided for in Section D-3.6.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted

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Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive

Committee).

D-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

D-4.1 Seller Non-Performance. “Non-Performance” with respect to Seller means Seller’s failure to provide capacity or deliver energy to the Designated Authority as this Service Schedule and the Confirmation require.

D-4.1.1 Purchaser Entitlement to Damages. In the event of Non-Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

D-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller’s Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided, that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.1.2 shall not diminish the performing Party’s rights to collect damages for such Non-Performance under Section D-4.1.1, or to avail itself of remedies for other Events of Default.

D-4.2 Purchaser Non-Performance. “Non-Performance” with respect to the Purchaser means the Designated Authority’s failure to receive capacity and/or energy, or the Designated Authority’s use of capacity and/or energy under this Service Schedule which use does not conform to Section D-3.4.2 (such capacity and/or energy, the “unauthorized energy”).

D-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall compensate Seller in an amount equal to the quantity of

unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour.

D-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (but not Section 22.2(a)), provided that the right to terminate all transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.2.1, or to avail itself of remedies for other Events of Default under the Agreement.

D-4.3 Termination under Section D-4.1.2 or D-4.4.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section D-4.1.2 or D-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

D-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE E

ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER

E-1 PURPOSE

This Service Schedule states procedures, terms and conditions pursuant to which the Seller provides Energy Imbalance Power and Generation Imbalance Power to the Purchaser, as specified in the Confirmation, and the Purchaser receives such service to meet a reliability obligation or to resell as ancillary services under an OATT.

E-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

E-2.1 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1.1 “Balancing Power” means a service or product that can be resold as Energy Imbalance Power or Generator Imbalance Power under Schedules 4 and 9, respectively, of the OATT or other schedule under an OATT for sale of imbalance power.

E-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

E-2.1.3 “Non-Performance” with respect to Seller shall have the meaning given in Section E-4.1 and with respect to Purchaser the meaning given in Section E-4.2.

E-2.1.4 “OATT” refers to the Purchaser’s Open Access Transmission Tariff approved by the FERC or, if the Purchaser has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

E-2.1.5 “OATT Schedule” refers to schedule 4 or 9 of the OATT for sale of ancillary services, or any other schedule for sale of imbalance power under an OATT.

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E-2.2 The following rules apply to this Service Schedule.

E-2.2.1 No product sold or transferred under this Service Schedule E shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

E-2.2.2 The OATT and OATT Schedules shall be applied in their forms as of the date of the Confirmation.

E-3 TERMS OF SERVICE

E-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Energy Imbalance and Generator Imbalance Power, to which the Confirmation applies;
- (b) The Standard Confirmation Provisions, as applicable;
- (c) Any additional attributes of the Balancing Power, as the Parties may agree;
- (d) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (e) Any conditions to the effectiveness of the Confirmation.

E-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

E-3.3 Seller shall provide Balancing Power from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, as may be stated in the Confirmation.

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E-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

E-3.4.1 Upon the requests of the Purchaser, Seller shall provide capacity and deliver energy associated with Balancing Power to the Purchaser at any rate of flow up to and including the applicable capacity(ies) and at such intervals as are specified in the Confirmation for the applicable hour(s).

E-3.4.2 Transmission must be available intra-hour, and may be arranged and scheduled in any manner that meets the requirements of the Parties.

E-3.5 Regulatory Matters – Rate Caps

E-3.5.1 The price for Balancing Power shall not be subject to the rate caps specified in Section E-3.5.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

E-3.5.2 Except as provided for in Section E-3.5.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange

ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

E-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

E-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's

failure to provide capacity or deliver energy to the Purchaser as this Service Schedule and the Confirmation require.

E-4.1.1 Purchaser Entitlement to Damages. In the event of Non- Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section E-4.1 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.1.1, or to avail itself of remedies for other Events of Default.

E-4.2 Purchaser Non-Performance. "Non-Performance" with respect to Purchaser means Purchaser's failure to receive energy that it had scheduled for receipt under this Service Schedule and the Confirmation.

E-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section E-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the

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Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.2.1, or to avail itself of remedies for other Events of Default.

E-4.3 Termination under Section E-4.1.2 or E-4.2.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section E-4.1.2 or E-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

E-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE R
RENEWABLE ENERGY CERTIFICATE TRANSACTIONS
WITH AND WITHOUT ENERGY

R-1 Introduction; Transaction Documentation; and Rules of Construction. This Service Schedule R states terms and conditions applicable to REC Transactions entered into by Parties under the Agreement.

R-1.1 Documentation. Each REC Transaction shall be documented in a Confirmation. Annex 2 is a Confirmation template, which the Parties may modify and make subject to any other agreement between them. A Confirmation for a REC Transaction will be given legal effect only if a Documentary Writing.

R-1.2 Contract Documents. The Agreement, Service Schedule R, and the fully executed Confirmation comprise a contract for a REC Transaction. Any conflicts between or among the Agreement, Service Schedule R, and the Confirmation shall be resolved in the following order of control: first, the Confirmation; second, Service Schedule R; and third, the Agreement.

R-1.3 Definitions. Definitions contained in the Agreement and Annex 1 apply to this Service Schedule R. Any conflicts among definitions contained in these documents shall be resolved in accordance with Section R-1.2.

R-1.4 Rules of Construction.

R-1.4.1 The Annexes of Service Schedule R are incorporated into and made a part of this Service Schedule R, as though set forth fully herein.

R-1.4.2 The word “including” shall mean “including but not limited to.” Unless otherwise specified, the word “Section” refers to a section of this Service Schedule R and includes all subparts of the specified section.

R-1.4.3 Subject to any legal restrictions applicable to a Party, the Parties to a REC Transaction may vary any term or condition of this Service Schedule R for that REC Transaction. Provisions in this Service Schedule R concerning such variance of terms, such as “unless otherwise agreed,” shall not prejudice the generality of the preceding sentence, provided, that the Parties shall not vary Section C-3.6 of Service Schedule C, Section B-3.6 of Service Schedule B, and Section A-3.7 of Service Schedule A.

R-1.4.4 An Applicable Program shall be applicable to a REC Transaction only if designated expressly in the Confirmation. No rule of contract construction or interpretation, and no inference or implication, shall cause an Applicable Program that is not designated expressly in the Confirmation to be applicable to a REC Transaction.

R-2 Confirmations; REC Products.

R-2.1 REC Transaction. A “REC Transaction” is a purchase and sale of a REC separately from or bundled with Energy. A REC Transaction may be for the purchase and sale of any REC Product defined in Section R-2.3 or another REC Product the Parties may define.

R-2.2 Confirmations. In addition to other terms and conditions to which the Parties may agree, the Confirmation:

R-2.2.1 must include the following terms: REC Product, Contract Quantity, Contract Price, Vintage, and Transfer Date, and whether the Environmental Attributes covered by the REC are All Attributes, Program Attributes, or other coverage the Parties may specify;

R-2.2.2 for a bundled REC Transaction (Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC), may include a single Contract Price which may be allocated between the REC and the Energy;

R-2.2.3 must identify the Renewable Energy Facility or Renewable Energy Source if the REC Transaction is All Attributes (Section R-2.4.1) or Program Attributes (Section R-2.4.2), if a designated Applicable Program requires such identification, or if the REC Product is Resource Contingent Bundled REC or Facility As-Run Bundled REC;

R-2.2.4 must designate an Applicable Program if the REC Transaction is Program Attributes, the Seller is to assure compliance with an Applicable Program (Sections R-5.2.1, 6.3, and 6.4), or to recover penalties and alternative compliance payments (Section R-9.1), and if the REC Transaction is All Attributes, may designate an Applicable Program (Section 2.4.1).

R-2.3 REC Products. A “REC Product” is any of the following defined products or other product specified in the Confirmation.

R-2.3.1 Firm REC. A “Firm REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of energy. The Seller has a firm obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force.

R-2.3.2 Firm Bundled REC. A “Firm Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a firm obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force. The terms and conditions of Service Schedule C apply to the purchase and sale of Energy associated with a Firm Bundled REC as the Parties may modify such terms and conditions in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section C-3.6 of Service Schedule C shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule C at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price.

R-2.3.3 Resource Contingent REC. A “Resource Contingent REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller has a resource contingent obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-

performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties may have agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.4 Resource Contingent Bundled REC.

- (a) A "Resource Contingent Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a resource contingent obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable

Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery, due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC or Delivery. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule B apply to the purchase and sale of Energy associated with a Resource Contingent Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section B-3.6 of Service Schedule B shall apply, except (1) where the

Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule B at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule B Section B-3.8 is modified to state the following:

Energy schedules for the Purchaser's share of a Renewable Energy Facility may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is

to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions. Seller shall timely notify the Purchaser of Scheduled Maintenance.

The following is added at the end of Section B-3.9:

(f) By the Seller when all or a portion of the unit is unavailable due to Fuel Impediment, unless otherwise agreed by the schedulers.

R-2.3.5 Facility As-Run REC. A “Facility As-Run REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller is obligated to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in

accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.6 Facility As-Run Bundled REC.

- (a) A "Facility As-Run Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has an obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.
- (b) The terms and conditions of Service Schedule A apply to the purchase and sale of Energy associated with a Facility As-Run

Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section A-3.7 of Service Schedule A shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule A at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule A Section A-3.3 is modified to state the following:

Energy schedules may be modified by the Purchaser or Seller with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC

requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions.

R-2.4 Environmental Attributes Contained In The REC. The Confirmation may describe the Environmental Attributes covered by the REC as All Attributes, Program Attributes, or as the Parties otherwise may agree. If the Confirmation does not designate a REC Transaction as Program Attributes or otherwise limit the Environmental Attributes conveyed, and if a Renewable Energy Facility or Renewable Energy Source is specified, the REC Transaction shall be All Attributes. A designation of All Attributes will not be effective unless a Renewable Energy Facility or Renewable Energy Source is designated in the Confirmation.

R-2.4.1 All Attributes. An “All Attributes” REC conveys all of the Environmental Attributes the Renewable Energy Facility or Renewable Energy Source designated in the Confirmation is capable of producing, whether known or unknown on the Effective Date, including, at a minimum, all Environmental Attributes required by any Applicable Program designated in the Confirmation. Seller disclaims any warranty that Environmental Attributes other than those required by an Applicable Program designated in the Confirmation fulfill the requirements of any other Applicable Program. To establish the

Environmental Attributes conveyed, the Confirmation may include a specification thereof.

R-2.4.2 Program Attributes. A “Program Attributes” REC conveys the Environmental Attributes required by an Applicable Program designated in the Confirmation. It conveys no other Environmental Attributes, the rights to which are retained by the Seller. The Parties should verify that a designated Tracking System will recognize a Program Attributes REC. (Note, WREGIS does not recognize a Program Attributes limitation upon conveyed Environmental Attributes.)

R-3 Delivery and Title.

R-3.1 Unbundled REC Transactions. This Section R-3.1 applies if the REC Product is a Firm REC, Resource Contingent REC, or Facility As-Run REC.

R-3.1.1 Delivery. “Deliver(y)(ed)” occurs upon completion of Seller’s transfer of the Contract Quantity to Purchaser. If a Tracking System is designated in the Confirmation, Seller shall cause transfer in accordance with the rules and procedures of the Tracking System. If the Tracking System does not state such rules or procedures, then Delivery shall occur upon the Tracking System’s transfer of the REC into Purchaser’s account. If a Tracking System is not designated in the Confirmation, Delivery is completed upon Seller’s delivery to Purchaser of an Attestation.

R-3.1.2 Acceptance. “Accept(ance)(ed)” means Purchaser’s receipt of Delivery of the REC from Seller, without Purchaser’s rejection. If a

Tracking System is designated in the Confirmation, Purchaser shall receive a transfer in accordance with the rules and procedures of the Tracking System, and Acceptance (or rejection) shall be made within five (5) Business Days following the date the Tracking System gives electronic notice to Purchaser that it has initiated transfer (this deadline applies regardless of any different period stated in the Tracking System's rules and procedures) and if timely rejection is not made, then the Delivery is Accepted. If a Tracking System is not designated in the Confirmation, Acceptance occurs upon Purchaser's Acceptance, without rejection within five (5) Business Days of delivery, of the Attestation delivered by Seller.

R-3.1.3 Passage of Title. Title to the REC shall pass from Seller to Purchaser upon Delivery and Acceptance.

R-3.2 Bundled REC Transactions. This Section R-3.2 applies if the REC Product is a Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC.

R-3.2.1 Delivery. "Delivery(y)(ed)" occurs upon completion of Seller's transfer to Purchaser of the Contract Quantity of the REC and the Contract Quantity of the Energy. Delivery of the REC shall be completed in accordance with Section R-3.1.1. Delivery of Energy shall be completed in accordance with the terms and conditions of the Confirmation and the Agreement.

R-3.2.2 Acceptance. “Acceptance” of the REC occurs in the manner specified in Section R-3.1.2, and of the Energy upon receipt at the delivery point in accordance with the Confirmation.

R-3.2.3 Passage of Title. If the Vintage of the REC is prior to the Effective Date, title to the REC passes from Seller to Purchaser on the Effective Date or other date to which the Parties agree. If the REC is to be generated on or after the Effective Date, title to the REC passes upon the generation of each megawatt hour of energy required for production of the REC, and Seller shall hold the REC in trust for Purchaser until Delivery. Passage of title to Energy occurs pursuant to the Agreement.

R-3.3 Actions Required of Parties to Assure Delivery.

R-3.3.1 Provision of Generation Information; Required Actions. No less than monthly, Seller shall provide Purchaser with a written statement setting forth for applicable periods the quantities of Seller’s generation of energy for production of the REC. Seller shall promptly take all actions and do all things necessary and appropriate to cause the designated Tracking System, if any, to transfer the REC to Purchaser, including promptly providing all required information and documents in the required forms, and paying any and all fees the Tracking System imposes on Seller. If the Confirmation provides for a designated Tracking System to expedite issuance of certificates (for example, forward transfer certificates in WREGIS), Seller shall promptly take all actions required to cause such expedition. If no Tracking System is

designated in the Confirmation, then upon creation of the REC Seller shall promptly deliver the Attestation to Purchaser.

R-3.3.2 Failure to Issue REC. Seller is responsible for transfer and issuance of RECs by the Tracking System; Purchaser's sole responsibilities are maintenance of an account with the Tracking System and Acceptance of conforming RECs pursuant to Section R-3.1.2. Without prejudice to the immediately preceding sentence, in the event a Tracking System designated in the Confirmation declines to issue an electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of a REC, each Party will provide the other Party with all documents, communications, and information sent to or received from the Tracking System that pertain thereto. The Parties will cooperate, and each Party will complete any uncompleted items for which it is responsible, each at its own expense. If following such efforts, and due to no failure of Seller to take all required actions, the Tracking System does not issue the electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of the REC, Seller may, upon Purchaser's agreement (which Purchaser may decline in its discretion), provide an Attestation to Purchaser to effect Delivery. The obligations under this Section R-3.3.2 shall not be construed to diminish the Seller or the Purchaser's respective rights and obligations under the Agreement, Service Schedule R, and the Confirmation.

R-3.4 Conveyance and Transfer. As of both Delivery and passage of title, Seller shall transfer and convey to Purchaser all right, title, and interest in and to the REC and all Environmental Attributes underlying the REC pursuant to the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and the Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-4 Charges; Credit. The charge shall be an amount equal to the Contract Price multiplied by the Delivered and Accepted quantity, without prejudice to the right to recover damages owed in accordance with Section R-9. The Parties may state any credit terms and conditions to which they agree in the Confirmation; Section 27 of the Agreement applies unless otherwise agreed.

R-5 Governing Law; Change in Law.

R-5.1 Governing Law. Section 24 of the Agreement applies except as follows. If an Applicable Program is designated in the Confirmation, all performance obligations pursuant to the REC Transaction concerning the creation, issuance, transfer, tracking and retirement of the REC shall be governed as follows:

R-5.1.1 If the Applicable Program was created by the laws of a Governmental Authority, then by the laws, rules, regulations, orders, and judicial precedent of such Governmental Authority;

R-5.1.2 If the Applicable Program was not created by the laws of a Governmental Authority, but is a voluntary program, then Section 24 of the Agreement applies without modification, and the Parties shall be bound contractually to comply with the standards and criteria of the voluntary Applicable Program.

R-5.2 Change in Law.

R-5.2.1 Applicability. Section R-5.2 applies only to REC Transactions for which an Applicable Program is designated in the Confirmation. In a REC Transaction for which no Applicable Program is designated, Seller makes no representation or warranty concerning compliance with any particular Applicable Program and any such representation or warranty is expressly disclaimed.

R-5.2.2 Definitions.

- (a) “Change in Law” means any addition or amendment, by a Governmental Authority, to any laws, rules, regulations, orders, or judicial precedent, that applies to an Applicable Program designated in the Confirmation, that is enacted or issued after the Effective Date and nullifies compliance of the REC with the Applicable Program. An addition or amendment that is enacted or issued before the Effective Date but effective on or after the Effective Date is not a Change in Law.
- (b) “Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date and the Transfer Date, including requirements modified or added by a Change in Law.
- (c) “Not Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the

requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date only, and the REC and Environmental Attributes are not required to conform to requirements modified or added by a Change in Law.

R-5.2.3 Default Designation as Regulatorily Continuing. A REC Transaction as to which an Applicable Program is designated in the Confirmation shall be Regulatorily Continuing unless the Parties specify in the Confirmation that the REC Transaction is Not Regulatorily Continuing.

R-5.2.4 Effect of Change In Law in Regulatorily Continuing REC Transaction.

- (a) If a Change in Law occurs in a Regulatorily Continuing REC Transaction, Seller shall be obligated to make reasonable efforts to attain compliance with the designated Applicable Program, the costs of which shall not be required to exceed any cost cap specified in the Confirmation. If despite such efforts to attain compliance, including reasonable expenditures, Seller cannot obtain compliance and Purchaser refuses to accept Delivery of the REC due to the Change in Law, Seller shall not be liable for damages under Section R-9.
- (b) In the event Purchaser refuses to accept Delivery of the REC under Section 5.2.4(a), and Seller has Delivered energy to Purchaser in the REC Transaction, Purchaser shall not be

relieved of its obligation to pay for such energy, which payment shall be either at the price allocated to energy in the Confirmation, if any, and if no allocation is made, then at an amount equal to the Replacement Price.

R-5.2.5 Amendment to Address Change In Law. Nothing in this Section R-5.2 shall be construed to preclude the Parties from agreeing to amend the Confirmation to permit a Seller to perform its obligations in a REC Transaction as to which a Change in Law has occurred.

R-6 Seller Representations and Warranties. In each REC Transaction, Seller represents and warrants to Purchaser the following:

R-6.1 As of both Delivery and passage of title, Seller has and conveys to Purchaser all right, title, interest in and to the REC and all Environmental Attributes underlying the REC as required by the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-6.2 As of both Delivery and passage of title, the REC and Environmental Attributes conform to the requirements of the REC Transaction.

R-6.3 If the REC Transaction is Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), subject to any limits upon Seller's obligations under Section R-5.2.4, as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date and the Transfer Date.

R-6.4 If the REC Transaction is Not Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date.

R-6.5 With respect to deliveries of Energy in REC Transactions for Firm Bundled REC, Contingent Resource Bundled REC, and Facility As-Run Bundled REC, that Seller has complied with the representations and warranties stated in Section 33 of the Agreement.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

R-7 Records; Confidentiality

R-7.1 Correction of Records. If any statement, charge or computation concerning a REC Transaction is inaccurate, the Parties promptly shall make any adjustments to records as reasonably necessary to correct such inaccuracy, and make any adjustment of payments required to correspond to the corrected records, provided, that Purchaser shall not be required to pay a higher Contract Price or accept a lower Contract Quantity than the Confirmation requires.

R-7.2 Exception to Confidentiality. Purchaser has the right to disclose to any Governmental Authority having jurisdiction over Purchaser, or to any voluntary Applicable Program and the person or entity specified by the rules of procedures of the voluntary Applicable Program to perform certification, any information necessary to demonstrate Purchaser's compliance with an Applicable Program

(whether or not designated in the Confirmation); provided, however, that Purchaser shall use reasonable efforts to minimize the scope of any such disclosure and shall require, as may be feasible, that the recipient maintain the confidentiality of any documents or confidential information governed by the provisions of Section 30.1 of the Agreement, including, if permitted under applicable procedures of the Governmental Authority or such administrator, and subject to any applicable public records laws, seeking a protective order or similar protective mechanism in connection with any disclosure. With respect to a REC, Purchaser also has the right to disclose the following to any customer or affiliate of Purchaser that is participating in any voluntary or mandatory Applicable Program: the Renewable Energy Source, the location of any Renewable Energy Facility designated in the Confirmation, and monthly generation quantities of energy underlying the REC.

R-8 Uncontrollable Force. The following is substituted for the first sentence of the second paragraph of Section 10 of the Agreement:

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of producing or obtaining the REC or energy (or ability to sell the REC or energy at a price exceeding the Contract Price); (ii) the loss or failure of Seller’s supply, including materials or equipment; or (iii) Purchaser’s inability economically to use or resell the REC or energy.

The following is added at the end of the second paragraph of Section 10 of the Agreement:

If production of energy at a Renewable Energy Facility designated in the Confirmation is curtailed due to an Uncontrollable Force, any production during

the period of such curtailment shall be allocated as follows: first, among all purchasers of Firm RECs, Firm Bundled RECs, Resource Contingent RECs, Resource Contingent Bundled RECs, and energy purchased under Service Schedules B and C, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation, and second, to all purchasers of Facility As-Run RECs, Facility As-Run Bundled RECs and energy purchased under Service Schedule A, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation.

R-9 Remedies for Non-Performance.

R-9.1 Damages. Section 21.3 of the Agreement, as modified in this Section 9, applies to REC Transactions.

R-9.1.1 Failure to Receive or Deliver in Unbundled REC Transactions.

This Section R-9.1.1 applies to REC Transactions for Firm REC, Resource Contingent REC, and Facility As-Run REC. Section 21.3(a)(3) and (5) of the Agreement are inapplicable. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery of RECs Delivered by Seller in accordance with the Confirmation, then Purchaser shall be liable to Seller for the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price and (ii) is the amount by which the quantity of

RECs Purchaser refused to Accept was less than the Contract Quantity, subject to any limitations stated in the Confirmation.

21.3(a)(2) is modified as follows:

If Seller fails to Deliver RECs to Purchaser in accordance with the Confirmation, then Seller shall be liable to Purchaser for:

(a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price and (ii) is the amount by which the quantity of RECs Seller Delivered was less than the Contract Quantity; plus (b) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations stated in the Confirmation.

R-9.1.2 Failure to Receive or Deliver in Bundled REC Transactions.

(a) **Price Not Allocated between REC and Energy.** This Section R-9.1.2(a) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run Bundled REC, and in which the Confirmation does not allocate the Contract Price between the REC and Energy. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery from Seller in accordance with the Confirmation, then Purchaser shall be

liable to Seller for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price, and (ii) is the amount by which the quantity of RECs and Energy Purchaser refused to Accept was less than the Contract Quantity, plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Purchaser's schedule or receipt of Energy (based on Seller's commercially reasonable efforts to achieve such reduction), subject to any limitations stated in the Confirmation. If the Purchaser refused to Accept Delivery of RECs but Accepted Delivery of Energy, then Purchaser shall pay Seller for such received Energy at the Resale Price of the Energy; if the Purchaser refused to Accept Delivery of Energy but Accepted Delivery of RECs, the Purchaser shall pay Seller for Accepted RECs at an amount equal to the Contract Price less the Resale Price of the Energy.

Section 21.3(a)(2) of the Agreement is modified as follows:

If Seller fails to Deliver to Purchaser in accordance with the Confirmation, then Seller shall be liable to the Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if

any, by which the Replacement Price exceeded the Contract Price, and (ii) is the amount by which the quantity of RECs and Energy Delivered was less than the Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's schedule or delivery of Energy (based on Purchaser's commercially reasonable efforts to achieve such reduction), plus (c) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations on such amounts stated in the Confirmation. In the event Seller Delivers Energy but not RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

- (b) Price Allocated between REC and Energy.** This Section R-9.1.2(b) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run

Bundled REC, in which the Confirmation sets forth an allocation of the Contract Price between the REC and energy.

- (i) If Purchaser refuses to Accept Delivery of RECs in accordance with the Confirmation, then Purchaser shall be liable to Seller as set forth in Section R-9.1.1.
- (ii) Subject to part (v) of this Section, if Seller fails to Deliver RECs in accordance with the Confirmation, then the Seller shall be liable to Purchaser as set forth in Section R-9.1.1.
- (iii) If Purchaser refuses to receive Delivery of Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (iv) If Seller fails to Deliver Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (v) In the event Seller Delivers Energy but fails to Deliver RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

R-10 Other Modifications of the Agreement for REC Transactions.

R-10.1 Revised Agreement Definitions. For purposes of REC Transactions, the following revisions to definitions contained in Section 4 of the Agreement shall apply:

R-10.1.1 Contract Quantity: The amount of RECs and, if applicable, Energy, to be supplied for a transaction under the Agreement.

R-10.1.2 Power Marketer: An entity which buys, sells, and takes title to RECS, electric energy, transmission and/or other services from traditional utilities and other suppliers.

R-10.1.3 Physically Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying REC and/or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying REC or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation.

R-10.1.4 Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute REC(s), capacity and/or energy in place of the REC(s), capacity and/or energy not Delivered (for REC(s) and/or energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, for Energy at the delivery point specified in the Confirmation. Substitute

REC(s) must be similar in all material respects to the REC(s) specified in the Confirmation.

R-10.1.5 Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the REC(s), capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Seller in a commercially reasonable manner, for Energy at the delivery point specified for the transaction in a Confirmation.

R-10.2 Notices. Section 12.2 of the Agreement is revised by inserting “RECs or” before the phrase “capacity and/or energy.”

SERVICE SCHEDULE R
ANNEX 1 - DEFINITIONS

“Acceptance” has the meaning given in Sections R-3.1.2 or R-3.2.2, as applicable.

“All Attributes” has the meaning given in Section R-2.4.1.

“Applicable Program” means (a) a program adopted by a Governmental Authority that requires the sale, purchase, or use of energy generated or produced by a facility that converts renewable natural resources such as wind, sunlight, rain, tides, geothermal heat, hydro, or biomass into electric energy, including any Renewable Portfolio Standard (RPS) adopted by a Governmental Authority and all Governing Law that pertains thereto, or (b) a voluntary program for reporting, crediting or attributing RECs and all rules, standards and procedures adopted by the administering organization that pertain thereto.

“Attestation” means (a) the Seller’s written statement, certified as true and correct by an authorized officer of Seller, that the REC is Delivered and title to the REC has been transferred to the Purchaser, and that the Seller has taken all steps to effect transfer of the REC required by any Tracking System designated in the Confirmation, and (b) that satisfies the requirements of any Applicable Program designated in the Confirmation or is a generation information system record of ownership transfer. Annex 2 Exhibit 1 is a template for use of the Parties; an agreed form of Attestation should be included as a part of the Confirmation, and the agreed form will suffice as an Attestation regardless of whether or not it meets the criteria of this definition.

“Change in Law” has the meaning given in Section R-5.2.2(a).

“Deliver” has the meaning given in Sections R-3.1.1 or 3.2.1, as applicable.

“Effective Date” means the date both Parties have executed the Confirmation, or which the Parties otherwise specify in the Confirmation.

“Environmental Attribute” means the following, unless a Tracking System is designated in the Confirmation, and such Tracking System defines “Environmental Attribute,” in which case the Tracking System’s definition of “Environmental Attribute” shall control: a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by a Renewable Energy Source, and which capable of measurement, verification, or calculation. The term does not include tax credits or other tax benefits under any law or other direct third-party subsidies for generation of electric energy by a Renewable Energy Source. The term includes “non-energy attributes” under Oregon law and “non-power attributes” under Washington law. By way of example, the term may include the following: avoided emissions of CO₂ or other gases, or avoided water use (but not water or other rights or credits required under an Applicable Program to site and develop the Renewable Energy Facility itself).

“Facility As-Run REC” has the meaning given in Section R-2.3.5.

“Facility As-Run Bundled REC” has the meaning given in Section R-2.3.6(a).

“Firm Bundled REC” has the meaning given in Section R-2.3.2.

“Energy” in the case of a Firm Bundled REC refers to Firm Capacity/Energy Sale or Exchange Service under Service Schedule C as may be modified by Service Schedule R, in the case of a Resource Contingent Bundled REC refers to Unit Commitment Service under Service Schedule B as may be modified by Service Schedule R, and in the case of Facility As-Run Bundled REC refers to Economy Energy Service under Service Schedule A as may be modified by Service Schedule R.

“Firm REC” has the meaning given in Section R-2.3.1.

“Fuel Impediment” means the reduction or lack of wind or sunlight, excessive wind, or other insufficiency or excess of a Renewable Energy Source (excluding biomass), that causes a reduction or cessation of generation of electric energy by a Renewable Energy Facility.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).

“Governing Law” has the meaning given in Section 24 of the Agreement as that Section may be modified by Section R-5.1.

“Governmental Authority” means the United States, a State thereof, any political subdivision or governmental body thereof, including any department or agency, with jurisdiction over a Party or an Applicable Program.

“Not Regulatorily Continuing” has the meaning given in Section R-5.2.2(b).

“Program Attributes” has the meaning given in Section R-2.4.2.

“Regulatorily Continuing” has the meaning given in Section R-5.2.2(a).

“REC” refers to a renewable energy certificate and means a credit or certificate representing Environmental Attributes created by or resulting from the generation of one (1) megawatt hour of electric energy by a Renewable Energy Source, subject to the terms and conditions stated in the Confirmation.

“REC Product” has the meaning given in Section R-2.2.

“REC Transaction” has the meaning given in Section R-2.1.

“Resource Contingent REC” has the meaning given in Section R-2.3.3.

“Resource Contingent Bundled REC” has the meaning given in Section R-2.3.4(a).

“Renewable Energy Facility” means an electric generation unit or other facility or installation capable of producing or emitting electric energy using a Renewable Energy Source.

“Renewable Energy Source” means (a) a resource that is recognized as a renewable energy source under an Applicable Program designated in the Confirmation, or (b) if no Applicable Program is designated in the Confirmation, a natural resource from or through which electric energy can be generated, including wind, solar, geothermal, landfill gas, wave, tidal, thermal ocean technologies, and hydroelectric power, and excluding fossil carbon-based, non-renewable, or radioactive fuel.

“Reporting Rights” means the right to report and register the exclusive ownership of the REC or Environmental Attributes under Governing Law or any other laws, regulations, orders or judicial precedents of the government of the United States of America or any department or agency thereof, or any State or political subdivision thereof, including mandatory and voluntary reporting, and including reporting under section 1605(b) of the Energy Policy Act of 1992 and any foreign or international emissions trading or reporting program.

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“Tracking System” means the entity, if any, the Parties designated in the Confirmation that will perform REC tracking and accounting functions, including receiving evidence of generation of the REC and crediting the resulting REC to the Purchaser’s account.

“Transfer Date” means the date specified in the Confirmation, no later than which Seller must make Delivery as defined in Sections R-3.1.1 or R-3.2.1, as applicable.

“Vintage” means the period in which the REC was or will be created.

SERVICE SCHEDULE R ANNEX 2

**FORM OF
REC TRANSACTION CONFIRMATION**

IDENTIFICATION OF PARTIES

Name of Seller:

Name of Purchaser:

Seller Information:

Contact

Tel (O): _____

Tel (Cell): _____

E-mail: _____

Fax: _____

Purchaser Information:

Contact

Tel (O): _____

Tel (Cell): _____

E-mail: _____

Fax: _____

Contact information is subject to change by notice.

ADDRESSES FOR FORMAL NOTICES:

Purchaser:

Seller

INCORPORATED DOCUMENTATION (any “long form” or other bilateral agreements between the Parties applicable to this Confirmation and incorporated herein)

REC TRANSACTION TERMS

REC Product (e.g., Firm REC, Firm Bundled REC, etc.) (see Section R-2.3):

Vintage of REC already created or period of generation for REC to be created (mm/yyyy)

Contract Quantity (stated either on a megawatt hour basis or percentage of output of a designated Renewable Energy Facility)

Transfer Date (generally the Effective Date of this Confirmation for REC that already exists, and future date for REC to be generated after Effective Date)

Contract Price:

Allocation, if agreed:

REC:

Energy:

Environmental Attributes (Check One)

All Attributes (this designation is effective only if a Renewable Energy Source or Renewable Energy Facility is designated below)

Program Attributes (this designation is effective only if an Applicable Program is identified below) (Note: WREGIS and possibly other Tracking Systems will not recognize a Program Attributes REC, or may treat it as an All Attributes REC)

Applicable Program (required for Program Attributes; not required for All Attributes, but designation establishes the minimum Environmental Attributes required by a designated Applicable Program). Also required for recovery of penalties and alternative compliance payments (Section R-9.1). Designation should include detailed information, including any applicable legal citations, to assure adequate description of the program.

Designation of Renewable Energy Source or Renewable Energy Facility (required for All Attributes).

Renewable Energy Source: _____

Renewable Energy Facility

Name: _____

Location: _____

Generation Information System number: _____

Tracking System number: _____

Fuel (wind, solar, etc.): _____

Change in Law Provisions (Check One)

Regulatorily Continuing (Section R-5.2.2(b), requiring that Seller make commercial reasonable efforts to obtain compliance with Changes in Law in the designated Applicable Program. If checked, state any agreed maximum costs of such efforts (if no maximum is stated, then no maximum applies):

\$ _____

Not Regulatorily Continuing (Section R-5.2.2(c)).

Tracking System(s) if any: (if none specified, then Delivery occurs by Attestation and not by Tracking System crediting)

Damages. Damages include reimbursement for penalties and alternative compliance payments, subject to any agreed cap on this damages component, which can be zero (Section R-9.1):

\$ _____

Any agreements concerning forward certificates in WREGIS or other Tracking System Expedition) (Section R-3.3.1):

TERMS APPLICABLE TO ENERGY IF INCLUDED IN REC PRODUCT

Period (Schedule) of Delivery: From ______ To ______

Schedule (Days and Hours): _____

Delivery Rate: _____

Delivery Point(s): _____

Contract Quantity (specify all details): _____

Transmission Path for the Transaction (If Applicable): _____

EFFECTIVE DATE AND OTHER PROVISIONS

Effective Date (no earlier than mutual execution of this Confirmation)

Other provisions: _____ [generally stated in attachment to the Confirmation]

The Parties agree to the REC Transaction set forth herein as of the Effective Date

Seller

Purchaser

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____ Date: _____

ANNEX 2, Exhibit 1
Form of Attestation To Be Included As Exhibit To Confirmation

Attestation Of [Seller] (“REC Generator”)
Of Sale, Transfer, and Delivery Of Renewable Energy Certificate to
[Purchaser] “Purchaser”

Party and Contact Information:

[Insert names and addresses of Parties, address, and contact information]

Attestation:

I, [name of attesting officer], the [title] of Seller, declare and certify that Seller sold and delivered

Elect one:

Environmental Attributes Only

Bundled with electricity

to Purchaser, and further, that

1. Was generated by the Renewable Energy Facility (“REF”) designated below and sold, transferred and delivered, subject to receipt of payment, to Purchaser.
2. Is associated with electricity delivered into the [insert delivery area] in compliance with applicable energy delivery rules.

REF Generator Name and Number	Technology Type	Fuel Type (Renewable Energy Source)	Generation Period (mm/yy)	Generator First Day of Operation

The above statements are true and correct to the best of my knowledge, and based on my duly diligent inquiry. This Attestation may serve as a Bill of Sale to document, in accordance with the Confirmation, the transfer from Generator to Purchaser of all of Seller’s right, title and interest in and to the REC and environmental attributes it represents, as set forth above.

Either Party may disclose this Attestation to others, including a Tracking System, public utility commissions and other regulatory bodies having jurisdiction over Purchaser, and administrators of voluntary green energy programs, to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

Signature:

Date _____

Print Name: _____