



**Special Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, January 21, 2021 at 4:00 p.m.
Via Teleconference**

Pursuant to the Provisions of the Governor’s Executive Orders N-25-20 and N-29-20, which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing, all members of the Board of Directors and all staff will attend this meeting telephonically. Any interested member of the public who wishes to listen in should join this meeting via teleconferencing as set forth below.

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

Members of the public who wish to listen to the Board of Director’s meeting may do so with the teleconferencing call-in number and meeting ID code. Teleconference information below to join meeting:

Join meeting via Zoom:

- a. From a PC, Mac, iPad, iPhone, or Android device with high-speed internet.
(If your device does not have audio, please also join by phone.)**

<https://us02web.zoom.us/j/83445320647>

Meeting ID: 834 4532 0647

- b. By phone**

One tap mobile:

+1-669-900-9128,,83445320647 US

+1-346-248-7799,,83445320647 US

Dial:

+1- 669-900-9128 US

+1- 346-248-7799 US

Meeting ID: 834 4532 0647

Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.

Board Members: Dan Carson (Chair/City of Davis), Jesse Loren (Vice Chair/City of Winters), Don Saylor (Yolo County), Tom Stallard (City of Woodland), Lucas Frerichs (City of Davis), Wade Cowan (City of Winters), Gary Sandy (Yolo County), and Mayra Vega (City of Woodland)

4:00 p.m. Call to Order

1. **Welcome - Board Clerk to administer Oaths of Office to Board Members (Government Code § 1362)**
2. **Approval of Agenda**
3. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

CONSENT AGENDA

4. **Approve December 10, 2020 Board Meeting Minutes.**
5. **Receive 2021 Long Range Calendar.**
6. **Receive Financial Update – November 30, 2020 (unaudited) financial statement.**
7. **Receive Legislative Update.**
8. **Receive January 6, 2021 Regulatory Update provided by Keyes & Fox.**
9. **Receive January 5, 2021 Customer Enrollment Update.**
10. **Receive Community Advisory Committee December 17, 2020 Meeting Summary.**
11. **Approve revised and updated Community Advisory Committee Charge incorporating VCE's 3-year Strategic Plan and Environmental Justice Statement.**
12. **Receive copy of Amendment #1 to Jim Parks Consulting Agreement adding key account tasks and extending the contract one year.**

REGULAR AGENDA

13. **Accept Treasury and Investment report from the Valley Clean Energy (VCE) Treasurer and ratify the County of Yolo Investment Policy for the calendar year 2021 as the Investment policy applicable to VCE.**
14. **Consider Valley Clean Energy participation in Arrearage Management Plan that provides support for qualifying VCE low-income household customers to assist with electricity payments related to COVID impacts.**
15. **Consider entering into a Power Purchase Agreement for renewable energy and capacity between Valley Clean Energy and Resurgence Solar I, LLC to procure a 90-MW AC solar photovoltaic facility coupled with a 75-MW/300MWh (4-hour) lithium-ion battery energy storage system, under development by NextEra Energy Resources near the city of Boron in San Bernardino County, California.**
16. **Consider entering into an agreement with Pacific Gas & Electric (PG&E) to accept 2021 large-hydro GHG Free attributes and reject 2021 allocation of nuclear power GHG Free attributes.**
17. **Consider the 2021 Valley Clean Energy Power Procurement Plan that includes directives and delegations to SMUD for procuring portions of VCE's power portfolio for calendar year 2021 through 2023, and modification of specific VCE portfolio renewable and carbon-free targets for 2022 as deliveries from long-term renewable energy contracts begin.**
18. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of

VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.

- 19. Adjournment:** The Board has scheduled a meeting for Thursday, February 11, 2021 at 4:00 p.m. to held via teleconference.

**PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS
SPECIAL MEETING ON THURSDAY, JANUARY 21, 2021 AT 4:00 P.M.:**

PUBLIC PARTICIPATION. Public participation for this meeting will be done electronically via e-mail ***and*** during the meeting as described below.

Public participation via e-mail: If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org. If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting.

Verbal public participation during the meeting: If participating during the meeting, there are two (2) ways for the public to provide verbal comments:

- 1) If you are attending by computer, activate the “participants” icon at the bottom of your screen, then raise your hand (hand clap icon) under “reactions”.
- 2) If you are attending by phone only, you will need to press *9 to raise your hand.

VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.

Public Comments: If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or [notifying the host as described above](#). Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the “Subject” line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: <https://valleycleanenergy.org/board-meetings/>.

Accommodations for Persons with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 4

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from December 10, 2020 Board Meeting
DATE: January 21, 2021

RECOMMENDATION

Receive, review and approve the attached December 10, 2020 Board meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, DECEMBER 10, 2020**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, November 12, 2020 at 4:01 p.m., to be held via Zoom teleconference. Chairperson Don Saylor established that there was a quorum present and began the meeting at 4:00 p.m.

Board Members Present: Don Saylor, Dan Carson, Tom Stallard, Gary Sandy, Wade Cowan, Lucas Frerichs, Jesse Loren

Members Absent: Angel Barajas

Approval of Agenda Motion made by Director Loren to approve the December 10, 2020 agenda, seconded by Director Stallard. Motion passed unanimously with Director Barajas absent.

Public Comment Chair Saylor opened the floor for public comment. There are no written or verbal comments.

Approval of Consent Agenda / Resolution 2020-035 There were no items pulled from the consent agenda. Motion made by Director Stallard to approve the consent agenda, seconded by Director Sandy. Motion passed with Director Barajas absent. There were no written or verbal public comments. The following items were approved, ratified, and/or received:

4. November 12, 2020 Board meeting Minutes;
5. 2020 and 2021 Long Range Calendar;
6. Financial Updated – October 31, 2020 (unaudited) financial statement;
7. Legislative update provided by Pacific Policy Group;
8. December 2, Regulatory update provided by Keyes & Fox;
9. December 2, 2020 Customer Enrollment Update;
10. Community Advisory Committee November 19, 2020 meeting summary; and,
11. Amendment 21 to Task Order 4 of the Sacramento Municipal Utilities District agreement – operational staff extension of Director of Finance and Internal Operations as Resolution 2030-035.

Item 12: Approve 2021 Legislative Platform Interim General Manager Mitch Sears introduced this item and reminded those present that the board at their July 8, 2020 meeting adopted VCE's first legislative platform at which time Staff reported that the legislative platform would be updated in late 2020 in advance of the next legislative session to reflect ongoing and new legislative priorities. Mr. Sears introduced VCE's lobbyist consultant, Mark Fenstermaker of Pacific Policy Group. Mr. Fenstermaker reviewed the updates reflecting additions to the existing



legislative platform, including VCE's 3-year Strategic Plan and Environmental Justice statement, for the Board's consideration of adoption.

The Board briefly discussed the draft updated legislative platform and the future topics of the upcoming legislative session. There were no verbal or written public comments. Two additions were requested: 1) add "assistance" to section "6. COVID-19 Response", last sentence "..., assistance to avoid..." and 2) add either "adapt to" or "respond to" section "9. Environmental Justice, b. ...vulnerable communities to 'adapt to' or 'respond to' the impacts of climate change."

Motion made by Director Frerichs to approve the 2021 Legislative Platform with the two additions, seconded by Director Loren. Motion passed by the following vote:

AYES: Saylor, Carson, Stallard, Cowan, Frerichs, Sandy, Loren
NOES: None
ABSENT: Barajas
ABSTAIN: None

Item 13: Receive and file 2020 VCE Enterprise Risk Management Report.
(Informational)

VCE Staff George Vaughn presented a summary of VCE's 2020 Bi-annual Enterprise Risk Management (ERM) report. There were no questions from the Board and there were no verbal or written public comments. Mr. Sears informed the Board that Staff will get back to regular and time ERM reports. The Board accepted the bi-annual ERM report presented.

Item 14: Receive Community Advisory Committee 2020 Year End Report.
(Informational)

Mr. Sears introduced Community Advisory Committee (CAC) Chair Yvonne Hunter. Ms. Hunter informed those present that the 2020 Report summarizes CAC's actions and Task Group activities over the past year. Ms. Hunter highlighted several major accomplishments. She complimented the volunteer CAC members and the collaborative nature of VCE Staff in working with the CAC.

CAC Vice Chair Marsha Baird informed those present that the CAC is looking towards the formation of 2021 CAC task groups at their next meeting and welcome any suggestions or input from the Board.

Item 15: Receive VCE marketing and outreach 2020 year-end review presentation.
(Informational)

There were no written public comments.

Mr. Sears introduced VCE's Director of Customer Care and Outreach, Rebecca Boyles, who reviewed slides of the past year's marketing and outreach accomplishments and reviewed ongoing marketing and outreach efforts of enrolling City of Winters customers.

Director Loren thanked Ms. Boyles for the 2020 year-end review presentation. She strongly supports VCE's recently adopted Environmental Justice statement and is happy that City of Winters has an energy choice.



Director Frerichs commented that both the Environmental Justice statement and Strategic Plan goals, such as the decarbonization roadmap are positive for VCE and its customers. He commented that the SACOG grant with its electric vehicle improvements throughout Yolo County should be included in the marketing and outreach plan for 2021. Mr. Sears informed those present that construction of the EV charging stations are anticipated to start in the first quarter of 2021 with outreach efforts in the works.

Item 16: Election of 2021 BCE Board Chair and Vice Chair (Effective January 2021).

Director Stallard nominated Dan Carson to serve as the 2021 Chair of the VCE Board, seconded by Director Frerichs. Motion passed with Director Carson abstaining and Director Barajas absent.

Director Cowan nominated Jesse Loren to serve as the 2021 Vice Chair of the VCE Board, seconded by Director Sandy. Motion passed with Director Loren abstaining and Director Barajas absent.

Board Member and Staff Announcements

The Directors and VCE Staff thanked Chair Saylor for serving as VCE's Board Chair in 2020 and, congratulated Directors Carson and Loren for serving as Chair and Vice Chair in 2021.

Director Stallard informed those present that seven (7) Tesla super chargers were installed at the Gateway Mall near Target and Costco in Woodland. Next Tuesday the Woodland City Council will adopt Board Committee assignments and he announced that Councilmember Mayra Vega will be assigned to the VCE Board.

Chair Saylor reviewed all of VCE's accomplishments during the past year and thanked the Board, CAC and Staff for their leadership and work.

Adjournment

Chair Saylor adjourned the meeting at 5:19 p.m. The next Board meeting is scheduled for Thursday, January 14, 2021 at 4 p.m. via teleconference.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 5

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk/Administrative Analyst
SUBJECT: Board and Community Advisory Committee 2021 Long-Range Calendar
DATE: January 21, 2021

Recommendation

Receive and file the 2021 Board and Community Advisory Committee long-range calendar listing proposed meeting topics.

Board meetings are scheduled for the second Thursday of each month. On August 13, 2020, the Board adopted Resolution 2020-022, which allows the Board during the COVID pandemic to hold their regular meetings at 4 p.m. via teleconference.

VALLEY CLEAN ENERGY

2021 Meeting Dates and *Proposed* Topics – Board and Community Advisory Committee

MEETING DATE		TOPICS	ACTION
January 14, 2021	Board WOODLAND	<ul style="list-style-type: none"> • Oaths of Office for Board Members • Approve Updated CAC Charge • Approve 2021 Procurement Plan • Treasurer Function / Investment • GHG Free Attributes • Power Purchase Agreement 	<ul style="list-style-type: none"> • Action • Action • Action • Action • Action • Action
January 28, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Formation of 2021 Task Groups • Quarterly Power Procurement / Renewable Portfolio Standard Update • Quarterly Strategic Plan update • Building Electrification 	<ul style="list-style-type: none"> • Discussion/Action • Informational • Informational • Informational/Discussion
February 11, 2021	Board DAVIS	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> • Informational
February 25, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 2021 Task Groups – Tasks/Charge 	<ul style="list-style-type: none"> • Informational • Discussion/Action
March 11, 2021	Board WOODLAND	<ul style="list-style-type: none"> • Preliminary FY21/22 Operating Budget (Regular) • 	<ul style="list-style-type: none"> • Review
March 25, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Re/Appointment of Members to Community Advisory Committee 	<ul style="list-style-type: none"> • Discussion
April 8, 2021	Board DAVIS	<ul style="list-style-type: none"> • River City Bank Revolving Line of Credit 	<ul style="list-style-type: none"> • Action
April 22, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Re/Appointment of Members to Community Advisory Committee • Quarterly Power Procurement / Renewable Portfolio Standard Update • Quarterly Strategic Plan update 	<ul style="list-style-type: none"> • Discussion • Informational • Informational

May 13, 2021	Board WINTERS	<ul style="list-style-type: none"> Update on FY21/22 Operating Budget Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Informational Informational
May 27, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Re/Appointment of Members to Community Advisory Committee Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Discussion Informational
June 10, 2021	Board DAVIS	<ul style="list-style-type: none"> Final Approval of FY21/22 Operating Budget Receive Enterprise Risk Management Report Extension of Waiver of Opt-Out Fees for one more year Re/Appointment of Members to Community Advisory Committee SMUD CPI Increase Amendment 	<ul style="list-style-type: none"> Approval Informational Action Action Action
June 24, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
July 8, 2021	Board WOODLAND	<ul style="list-style-type: none"> Renewable Portfolio Standard (RPS) Procurement Plan River City Bank Line of Credit 	<ul style="list-style-type: none"> Action Action
July 22, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Quarterly Power Procurement / Renewable Portfolio Standard Update Quarterly Strategic Plan update 	<ul style="list-style-type: none"> Informational Informational
August 12, 2021	Board DAVIS	<ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Informational
August 26, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Informational
September 9, 2021	Board WOODLAND	<ul style="list-style-type: none"> Approval of FY20/21 Audited Financial Statements (James Marta & Co.) River City Bank Revolving Line of Credit 	<ul style="list-style-type: none"> Action Action
September 23, 2021	Advisory Committee WOODLAND		

October 14, 2021	Board WINTERS	<ul style="list-style-type: none"> Financial Load Forecast FY2020/2021 Allocation of Net Margin Receive Update on 3 year Strategic Plan (adopted Oct. 2020) Certification of Standard and UltraGreen Products 	<ul style="list-style-type: none"> Informational Action <ul style="list-style-type: none"> Informational Action
October 28, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> Receive Financial Load Forecast and Allocation of Net Margin information Update on Power Content Label Customer Mailer Committee Evaluation of Calendar Year End Quarterly Power Procurement / Renewable Portfolio Standard Update Quarterly Strategic Plan update 	<ul style="list-style-type: none"> Informational Informational Discussion Informational Informational
November 11, 2021 Veterans' Day – Holiday – need to reschedule	Board WOODLAND	<ul style="list-style-type: none"> Certification of Power Content Label Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Action Informational
November 18, 2021 (3 rd Thursday of the month due to Thanksgiving holiday)	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Committee Evaluation of Calendar Year End Review Revised Procurement Guide Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Discussion/Action Action: Recom.to Board Informational
December 9, 2021	Board DAVIS	<ul style="list-style-type: none"> Receive Enterprise Risk Management Report Approve Revised Procurement Guide Receive CAC 2021 Calendar Year End Report Election of Officers for 2022 	<ul style="list-style-type: none"> Informational Action Receive Nominations
December 16, 2021 (3 rd Thursday of the month due to Christmas holiday)	Advisory Committee DAVIS	<ul style="list-style-type: none"> Discuss 2022 Task Group(s) formation Election of Officers for 2022 	<ul style="list-style-type: none"> Discussion Nominations
January 13, 2022	Board WOODLAND	<ul style="list-style-type: none"> Oaths of Office for Board Members Approve Updated CAC Charge (tentative) 	<ul style="list-style-type: none"> Action Action
January 27, 2022	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Quarterly Power Procurement / Renewable Portfolio Standard Update Quarterly Strategic Plan update 	<ul style="list-style-type: none"> Informational Informational

Note: CalCCA Annual Meeting EARLY November (tentative)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Finance and Operations Director

SUBJECT: Financial Update – November 30, 2020 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending November 30, 2020

DATE: January 21, 2021

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of November 1, 2020 to November 30, 2020 (with comparative year to date information) and Actual vs. Budget year to date ending November 30, 2020.

BACKGROUND & DISCUSSION:

The attached financial statements are prepared in a form to satisfy the debt covenants with River City Bank pursuant to the Line of Credit and are required to be prepared monthly.

The Financial Statements include the following reports:

- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows

In addition, staff is reporting the Actual vs. Budget variances year to date ending November 30, 2020.

Financial Statements for the period November 1, 2020 – November 30, 2020

In the Statement of Net Position, VCEA as of November 30, 2020 has a total of \$13,735,693 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account and \$1,668,552 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and owes as of November 30, 2020 \$220,261. VCEA began paying the Member agencies for the quarterly reimbursable expenditures starting in June 2019 and repayment

of the deferred amount of \$556,188 over a 12-month period, but new obligations are incurred on a monthly basis due to staffing, accounting and legal services billed by Member agencies to VCE.

The term loan with River City Bank includes a current portion of \$395,322 and a long-term portion of \$1,185,966 as of November 30, 2020, for a total of \$1,581,288. At November 30, 2020, VCE's net position is \$17,203,274.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$4,039,000 of revenue (net of allowance for doubtful accounts) of which \$3,704,545 was billed in November and \$198,828 represent estimated unbilled revenue. The cost of the electricity for the November revenue totaled \$3,352,568. For November, VCEA's gross margin is approximately 17% and operating income totaled \$336,065. The year-to-date change in net position was \$615,590.

In the Statement of Cash Flows, VCEA cash flows from operations was \$1,528,838 due to November cash receipts of revenues being higher than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending November 30, 2020

Below are the financial statement line items with variances >\$50,000 and 5%:

Electric Revenue - \$4,036,394 and 15% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts haven't been as severe as anticipated and the weather has been warmer than forecast.

Purchased Power - \$4,275,035 and 18% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts haven't been as severe as anticipated and the weather has been warmer than forecast.

Contingency – (\$101,361) and (100%) – variance is due to not having a need yet to utilize the contingency funds set aside in the budget.

Attachments:

- 1) Financial Statements (Unaudited) November 1, 2020 to November 30, 2020 (with comparative year to date information.)
- 2) Actual vs. Budget for year to date ending November 30, 2020



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF NOVEMBER 1 TO NOVEMBER 30, 2020

PREPARED ON DECEMBER 28, 2020

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
NOVEMBER 30, 2020
(UNAUDITED)

ASSETS

Current assets:

Cash and cash equivalents	\$	13,735,693
Accounts receivable, net of allowance		5,167,338
Accrued revenue		2,313,286
Prepaid expenses		13,136
Inventory - Renewable Energy Credits		913,310
Other current assets and deposits		6,883
Total current assets		<u>22,149,646</u>

Restricted assets:

Debt service reserve fund		1,100,000
Power purchase reserve fund		1,668,552
Total restricted assets		<u>2,768,552</u>

Noncurrent assets:

Other noncurrent assets and deposits		100,000
Total noncurrent assets		<u>100,000</u>
TOTAL ASSETS	\$	<u>25,018,198</u>

LIABILITIES

Current liabilities:

Accounts payable	\$	545,434
Accrued payroll		22,751
Interest payable		3,945
Due to member agencies		220,261
Accrued cost of electricity		3,423,335
Other accrued liabilities		(530,870)
Security deposits - energy supplies		2,506,140
User taxes and energy surcharges		42,640
Current Portion of LT Debt		395,322
Total current liabilities		<u>6,628,958</u>

Noncurrent liabilities

Term Loan- RCB		1,185,966
Total noncurrent liabilities		<u>1,185,966</u>
TOTAL LIABILITIES	\$	<u>7,814,924</u>

NET POSITION

Restricted		
Local Programs Reserve		224,500
Restricted		2,768,552
Unrestricted		14,210,222
TOTAL NET POSITION	\$	<u>17,203,274</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF NOVEMBER 1, 2020 TO NOVEMBER 30, 2020
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING NOVEMBER 30, 2020</u>	<u>YEAR TO DATE</u>
OPERATING REVENUE		
Electricity sales, net	\$ 4,039,000	\$ 30,120,120
TOTAL OPERATING REVENUES	<u>4,039,000</u>	<u>30,120,120</u>
OPERATING EXPENSES		
Cost of electricity	3,352,568	27,568,060
Contract services	197,886	1,242,130
Staff compensation	95,837	469,610
General, administration, and other	56,644	225,806
TOTAL OPERATING EXPENSES	<u>3,702,935</u>	<u>29,505,606</u>
TOTAL OPERATING INCOME (LOSS)	336,065	614,514
NONOPERATING REVENUES (EXPENSES)		
Interest income	4,022	26,720
Interest and related expenses	(4,704)	(25,644)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(682)</u>	<u>1,076</u>
CHANGE IN NET POSITION	335,383	615,590
Net position at beginning of period	16,867,891	16,587,684
Net position at end of period	<u>\$ 17,203,274</u>	<u>\$ 17,203,274</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF NOVEMBER 1 TO NOVEMBER 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING NOVEMBER 30, 2020	YEAR TO DATE
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 5,549,662	\$ 31,555,271
Receipts for security deposits with energy suppliers	1,647,000	1,990,500
Payments to purchase electricity	(5,117,903)	(29,649,462)
Payments for contract services, general, and administration	(456,669)	(2,580,932)
Payments for staff compensation	(93,252)	(458,663)
Other cash payments	-	(4,343)
Net cash provided (used) by operating activities	1,528,838	852,371
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(32,944)	(164,718)
Interest and related expenses	(4,962)	(26,134)
Net cash provided (used) by non-capital financing activities	(37,906)	(190,852)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	4,022	26,720
Net cash provided (used) by investing activities	4,022	26,720
NET CHANGE IN CASH AND CASH EQUIVALENTS		
Cash and cash equivalents at beginning of period	1,494,954	688,239
	15,009,291	15,816,006
Cash and cash equivalents at end of period	\$ 16,504,245	\$ 16,504,245
Cash and cash equivalents included in:		
Cash and cash equivalents	13,735,693	13,735,693
Restricted assets	2,768,552	2,768,552
Cash and cash equivalents at end of period	\$ 16,504,245	\$ 16,504,245

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF NOVEMBER 1 TO NOVEMBER 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING NOVEMBER 30, 2020</u>	<u>YEAR TO DATE</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING		
Operating Income (Loss)	\$ 336,065	\$ 614,514
(Increase) decrease in net accounts receivable	1,765,935.00	\$ 792,873
(Increase) decrease in accrued revenue	(200,358)	\$ 659,909
(Increase) decrease in prepaid expenses	10,011	\$ (12,511)
(Increase) decrease in inventory - renewable energy credits	(63,910)	\$ (913,310)
(Increase) decrease in other assets and deposits	-	\$ (4,343)
Increase (decrease) in accounts payable	2,828	\$ (96,966)
Increase (decrease) in accrued payroll	2,585	\$ 10,947
Increase (decrease) in due to member agencies	21,500	\$ 103,795
Increase (decrease) in accrued cost of electricity	(1,701,425)	\$ (1,168,092)
Increase (decrease) in other accrued liabilities	(236,478)	\$ (1,107,314)
Increase (decrease) security deposits with energy suppliers	1,647,000	\$ 1,990,500
Increase (decrease) in user taxes and energy surcharges	(54,915)	\$ (17,631)
Net cash provided (used) by operating activities	<u>\$ 1,528,838</u>	<u>\$ 852,371</u>

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2021
FOR THE YEAR TO DATE ENDING 11-30-20

Description	11/30/2020	11/30/2020	YTD Variance	% over/-under
	YTD FY2021 Actuals	YTD FY2021 Budget		
Electric Revenue	\$ 30,120,120	\$ 26,083,726	\$ 4,036,394	15%
Interest Revenues	26,719	43,323	(16,604)	-38%
Purchased Power	27,568,057	23,293,022	4,275,035	18%
Labor & Benefits	469,610	493,697	(24,087)	-5%
Salaries & Wages/Benefits	314,229	343,520	(29,291)	-9%
Contract Labor	116,665	102,565	14,100	14%
Human Resources & Payroll	38,716	47,611	(8,895)	-19%
Office Supplies & Other Expenses	62,269	61,179	1,090	2%
Technology Costs	13,660	8,957	4,704	53%
Office Supplies	439	960	(521)	-54%
Travel	-	2,540	(2,540)	-100%
CalCCA Dues	47,970	47,972	(2)	0%
Memberships	200	750	(550)	-73%
Contractual Services	1,245,581	1,313,924	(68,343)	-5%
LEAN Energy	3,450	10,000	(6,550)	-66%
Don Dame	1,458	4,167	(2,709)	-65%
SMUD - Credit Support	289,244	266,115	23,129	9%
SMUD - Wholesale Energy Services	239,860	240,231	(371)	0%
SMUD - Call Center	304,575	303,960	615	0%
SMUD - Operating Services	112,474	135,000	(22,526)	-17%
Legal Bankruptcy	-	10,250	(10,250)	-100%
Legal General Counsel	16,773	61,500	(44,727)	-73%
Regulatory Counsel	102,793	79,130	23,663	30%
Joint CCA Regulatory counsel	9,605	12,813	(3,208)	-25%
Legislative	25,000	25,625	(625)	-2%
Accounting Services	11,390	10,250	1,140	11%
Audit Fees	43,100	59,963	(16,863)	-28%
PG&E Acquisition Consulting	849	-	849	100%
Marketing Collateral	85,010	94,921	(9,911)	-10%
Rents & Leases	5,791	7,240	(1,449)	-20%
Hunt Boyer Mansion	5,791	7,240	(1,449)	-20%
Other A&G	152,290	148,559	3,731	3%
PG&E Data Fees	133,669	122,042	11,627	10%
Community Engagement Activities & Sponsorships	2,036	2,563	(527)	-21%
Insurance	2,085	3,143	(1,058)	-34%
New Member Expenses	-	18,500	(18,500)	-100%
Banking Fees	14,500	513	13,988	2729%
Program Costs	-	1,800	(1,800)	-100%
Miscellaneous Operating Expenses	2,008	2,619	(611)	-23%
Contingency	-	101,361	(101,361)	-100%
TOTAL OPERATING EXPENSES	\$ 29,505,606	\$ 25,421,599	\$ 4,084,007	16%
Interest Expense - Munis	-	-	-	#DIV/0!
Interest on RCB loan	24,997	25,488	(491)	-2%
Interest Expense - SMUD	646	646	-	0%
NET INCOME	\$ 615,590	\$ 679,315	\$ (63,725)	-9%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: January 21, 2021

Pacific Policy Group, VCE’s lobby services consultant, continues to work with Staff and the Community Advisory Committee’s Legislative - Regulatory Task Group on several legislative bills. Below is a summary:

The Legislature reconvenes from the winter holidays on January 11, a week later than originally scheduled. Senate Pro Tem Atkins and Assembly Speaker Rendon delayed the legislature’s return due to the increased spread of COVID-19 throughout California. The one-week extension of the winter recess demonstrates that the COVID-19 pandemic continues to disrupt the legislative calendar and may continue to do so throughout the 2021 legislative session.

In addition to disruptions to the legislative calendar, the pandemic is also affecting the number of bills that will be considered during the 2021 legislative session. Although no official policy has been stated, it is understood throughout the Capitol that legislators will be limited to moving a maximum of 12 bills through the committee process of the other house, an approximately 50 percent reduction in the amount of bills legislators had been permitted to move in prior years. February 19, 2021 is the deadline for introducing legislation this year.

The Legislature’s first order of business is digesting the Governor’s proposed 2021-22 state budget, which the Governor is scheduled to present on Friday, January 8, 2021. The COVID-19 pandemic and the state’s response to it will be the focal point of the 2021-22 budget. Prior to unveiling his full proposal, Governor Newsom announced that part of the overall budget proposal will be a \$4.5 billion recovery effort that includes funding to assist small businesses, promote workforce development, create new housing, and invest in electric vehicles and electric vehicle infrastructure.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: January 21, 2021

Please find attached Keyes & Fox’s December 2020 Regulatory Memorandum dated January 6, 2021, an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

Attachment: Keyes & Fox Regulatory Memorandum dated January 6, 2021

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance (“VCE”) Board of Directors

From: Sheridan Pauker, Partner, Keyes & Fox, LLP
Tim Lindl, Partner, Keyes & Fox LLP
Ben Inskeep, Principal Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: January 6, 2021

Summary

Keyes & Fox LLP and EQ Research, LLC, are pleased to provide VCE’s Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). A Glossary of Acronyms used is provided at the end of this memo.

In summary, this month’s report includes regulatory updates on the following priority issues:

- **Ensuring Summer 2021 Reliability:** Parties filed reply comments on the Order Instituting Rulemaking, followed comments in response to an Email Ruling on emergency capacity procurement. A prehearing conference was held on December 15, 2020. The ALJ issued the final staff proposal on Flex Alerts, as well as staff guidance and questions for parties to consider when developing proposals for submission in opening testimony. The Assigned Commissioner issued the Scoping Memo and Ruling and a Ruling directing IOUs to seek contracts for capacity, available for the net peak demand in summer 2021 and summer 2022. On December 30, 2020, the ALJ issued a Ruling slightly modifying the procedural schedule.
- **PG&E 2021 ERRR Forecast / 2021 PUBA Trigger:** The CPUC issued D.20-12-038, adopting the ERRR revenue requirement and 2021 PCIA rates and closing the proceedings. The CPUC approved the key, substantive provisions of a Settlement Agreement filed by PG&E, Joint CCAs, CalCCA, and TURN resolving the PUBA Trigger proceedings without adopting the entire agreement.
- **IRP Rulemaking:** The CPUC issued D.20-12-044 establishing a backstop procurement process under D.19-11-016. The ALJ issued a Ruling granting a motion of the Center for Energy Efficiency and Renewable Technologies for a ruling authorizing comments on the evaluation of the IRP process, conducted by Gridworks. Comments were due December 22, 2020. The CPUC also held a remote participation workshop addressing the Staff Proposal attached to the November 19 ALJ Ruling that laid out a conceptual foundation for all future procurement informed by the IRP process.
- **RPS Rulemaking:** The ALJ issued a Proposed Decision on draft 2020 RPS Procurement Plans, directing retail sellers including VCE to file final 2020 RPS Procurement Plans, as modified to comply with the guidance therein, within 30 days of a final decision being issued (i.e., no sooner than February 14, 2021). Parties filed comments in response to the PD on December 31, 2020.

- **RA Rulemaking (2021-2022):** The CPUC issued D.20-12-006 resolving Track 3.A, which addressed the issues of the financial credit mechanism and competitive neutrality rules for the central procurement entities. The Assigned Commissioner issued a Scoping Memo and Ruling to modify the scope and schedule of Track 3B and designate the scope and schedule of Track 4. Parties filed revised proposals and the ALJ issued a Ruling providing Energy Division's revised issue paper and draft straw proposal regarding Track 3B.2 issues. On December 18, 2020, the Energy Division approved VCE's Advice Letter 5-E, granting VCE's request for a waiver of penalties associated with deficiencies in its local RA procurement in its year-ahead 2021 filing.
- **Wildfire Fund Non-Bypassable Charge (AB 1054):** The CPUC issued D.20-12-024 that continues the Wildfire Non-Bypassable Charge (NBC) of \$0.00580/kWh for January 1, 2021, through December 31, 2021, and closes this proceeding.
- **PG&E's Phase 1 GRC:** The CPUC issued D.20-12-005 resolving PG&E's Phase 1 GRC.
- **PG&E's Phase 2 GRC:** PG&E hosted settlement discussions throughout December, with additional calls scheduled for January 2021. PG&E also filed a Motion requesting the CPUC consolidate all of the real-time pricing issues in this proceeding and in A.20-10-011 into one or the other proceeding.
- **PG&E Regionalization Plan:** Parties filed comments on the Scoping Memo and Ruling.
- **PCIA Rulemaking:** The Assigned Commissioner issued an Amended Scoping Memo and Ruling.
- **Investigation into PG&E Violations Related to Wildfires:** The CPUC issued D.20-12-015, making one minor modification for clarification and denying applications for rehearing of D.20-05-019 (which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires) filed by Thomas Del Monte and the Wild Tree Foundation.
- **Direct Access Rulemaking:** No updates this month. Parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding potential additional expansion of direct access for nonresidential customers.
- **RA Rulemaking (2019-2020):** No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.
- **Investigation into PG&E's Organization, Culture and Governance:** No updates this month. On November 24, 2020, CPUC President sent a letter to PG&E indicating that she has directed CPUC staff to conduct fact-finding to determine whether to recommend that PG&E be placed into the enhanced oversight and enforcement process.
- **PG&E's 2019 ERRA Compliance:** No updates this month. On November 16, 2020, Joint CCAs and PG&E filed reply briefs on remaining issues not addressed in the pending Settlement Agreement.
- **Wildfire Cost Recovery Methodology Rulemaking:** No updates this month. An August PG&E Application for Rehearing remains pending regarding D.19-06-027, establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay.

Ensuring Summer 2021 Reliability

Parties filed reply comments on the Order Instituting Rulemaking on December 10, 2020, followed comments on December 18, 2020, in response to an Email Ruling on emergency capacity procurement. A prehearing conference was held on December 15, 2020. On December 18, 2020, the ALJ issued the final staff proposal on Flex Alerts, as well as staff guidance and questions for parties to consider when developing proposals for submission in opening testimony. The Assigned Commissioner issued the Scoping Memo and Ruling on December 18, 2020 and a Ruling directing IOUs to seek contracts for

capacity, available for the net peak demand in summer 2021 and summer 2022 on December 28, 2020. On December 30, 2020, the ALJ issued a Ruling slightly modifying the procedural schedule.

- **Background:** CAISO experienced rolling blackouts (Stage 3 Emergency) on August 14, 2020 and August 15, 2020 when a heatwave struck the Western U.S. and there was insufficient available supply to meet high demand. The OIR was issued to y to ensure reliable electric service in the event that an extreme heat storm occurs in the summer of 2021.

Joint opening comments on the OIR filed by VCE/SCP in this proceeding requested that the Commission fund a rapid 30-day Potential Study to explore how a large-scale aggregated demand response program could meet a significant fraction of the needed capacity starting in 2021 and growing to its full size in 3-5 years.

- **Details:** The Scoping Memo and Ruling identifies two primary issues as in scope: (1) how to increase energy supply and (2) decrease demand during the peak demand and net demand peak hours in the event that a heat storm similar to the August 2020 storm occurs in the summer of 2021. This OIR will only focus on actions that the Commission can adopt by April 2021 and that the parties can implement before the summer of 2021. With respect to increasing supply during peak and net peak demand hours, this proceeding will consider: (1) expedited procurement that could be online by summer 2021 and 2022, including the expansion of gas-fired generation assets; (2) potential mechanism to update the RA requirements for summer 2021; (3) potential support for the CAISO's CPM to procure additional capacity for summer 2021; (4) stack analysis of resource availability and needs for summer 2021; (5) expedited LSE IRP procurement; and (6) other opportunities to increase supply for summer 2021. To reduce demand during peak and net peak demand hours, this proceeding will consider: (1) Flex Alert paid media and social media; (2) Critical Peak Pricing; (3) out-of-market and outside of the RA framework emergency load reduction program; (4) modifications to the reliability demand response programs, including Base Interruptible Program, Agriculture Pump Interruptible, and Air Conditioner cycling; (5) modifications to Proxy Demand Resources such as the Capacity Bidding Program; (6) other considerations for Demand Response Resources; (7) electric vehicle load; and (8) other opportunities to reduce peak demand and net peak demand hours in summer 2021.

The December 18 ALJ Ruling provided the final Energy Division staff proposal for addressing summer 2021 reliability needs, as well as staff guidance and questions for parties to consider when developing proposals for submission in opening testimony due on January 11, 2021. One staff proposal is included that addresses the Flex Alert paid media campaign. For the following topic areas raised in the OIR, staff is providing guidance and questions for parties to address in developing in their own proposals: Critical Peak Pricing design, marketing, and expansion to non-IOU LSEs (including CCAs); new Emergency Load Reduction Program; changes to existing IOU DR programs; expedited IRP procurement; and expanding EV participation in DR programs. The staff proposal does not directly address the comments on the OIR filed by VCE/SCP, but does pose several questions for stakeholders to respond to regarding expanding demand response programs and marketing.

The December 28 Assigned Commissioner's Ruling directed PG&E, SCE, and SDG&E to seek contracts for capacity, available for the net peak demand in summer 2021 and summer 2022. The procurements are to take place on behalf of all customers with the costs and benefits allocated to benefitting customers through the existing Cost Allocation Mechanism (CAM). Resources must be deliverable during the peak and net peak demand periods and may include incremental capacity from efficiency upgrades at existing plants, revised PPAs, re-contracting with generation at risk of retirement, incremental storage, firm forward import contracts, RA-only contracts or contracts with tolling agreements, and utility-owned generation. The IOUs must submit contracts conforming to the Ruling as advice letters by February 15, 2021.

- **Analysis:** This proceeding could directly impact VCE's RA procurement requirements for the summer of 2021 or encourage VCE to take additional actions that result in greater resource availability during the summer 2021 peak and net peak periods. It could also indirectly affect VCE customers, such as by directing IOUs to take specific actions to increase RA availability and capacity that VCE customers could be required to pay for. Although the VCE/SCP's

recommendation to conduct a rapid demand response potential study has not been adopted thus far, the staff proposal includes questions on how to improve demand response programs and marketing.

- **Next Steps:** Opening and reply testimony, respectively, is due January 11, 2021, and January 19, 2021. Motions for evidentiary hearings are due January 21, 2021, with the hearing scheduled for January 27-29, 2021 if needed. Opening and reply briefs are due February 5, 2021, and February 12, 2021, respectively. The IOUs must submit contracts conforming to the December 28, 2020 Ruling as advice letters by February 15, 2021. The proposed decision will be issued in early to mid-March, followed by the issuance of a final decision in March or April.
- **Additional Information:** [Ruling](#) modifying procedural schedule (December 30, 2020); [Assigned Commissioner's Ruling](#) directing IOU contracts for additional capacity (December 28, 2020); [Scoping Memo and Ruling](#) (December 21, 2020); [ALJ Ruling and Staff Proposal](#) (December 18, 2020); [Email Ruling](#) on emergency capacity procurement (December 11, 2020); [Order Instituting Rulemaking](#) (November 20, 2020); Docket No. [R.20-11-003](#).

PG&E 2021 ERRA Forecast / 2021 PUBA Trigger

The ALJ issued a proposed decision on December 4, 2020. Comments and replies, respectively, were due December 11, 2020, and December 15, 2020. The CPUC approved D.20-12-038 at its December 17, 2020, meeting, adopting the ERRA revenue requirement and 2021 PCIA rates and closing the proceedings. The CPUC rejected a Settlement Agreement filed by PG&E, Joint CCAs, CalCCA, and TURN.

- **Background:** Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates.

PG&E's ERRA Trigger is different than the PUBA trigger and will affect bundled customers' rates but not VCE's customers' rates. The Commission adopted D.20-11-030, which leaves resolution of the 2020 ERRA trigger to the 2021 ERRA forecast case.

The PUBA tracks the differential between capped and uncapped PCIA rates. Once the total revenue differential in the PUBA reaches a trigger threshold, PG&E must file an expedited application to recover part of the amount in the PUBA. Such recovery will take place via a temporary increase to PCIA or PCIA-related rates for VCE's customers. PG&E's PUBA balance as of the end of year 2020 is undercollected by \$251.8 million.

- **Details:** D.20-12-038 approves an ERRA revenue requirement of \$2.666 billion and a PCIA 2021 revenue requirement of \$2.233 billion. It approves a 2021-2023 rate adder that combines a three-year amortization period for the 2020 PUBA amount and a 12-month amortization period for the projected 2021 PCIA amount above the cap, as proposed by PG&E and Joint CCAs. While D.20-12-038 denied a Motion by PG&E, Joint CCAs, CalCCA, and TURN to adopt a Settlement Agreement that would have resolved all of the disputed issues in the PUBA Trigger proceeding (A.20-09-14) as well as certain discovery and other disputes in the 2021 ERRA Forecast proceeding (A.20-07-002), it adopted all of the key, substantive terms from that settlement. Those terms include what amounts to waiving the PCIA rate cap for 2021, pending resolution of the forthcoming PFM (i.e., the cap would not be applied in the calculation of the 2021 PCIA Base Rate for PCIA-eligible departing load), amortizing the PUBA Adder over three years, and directing PG&E to provide additional information as part of a Master Data Request response in each of its future ERRA Forecast proceedings.
- **Analysis:** This proceeding established the amount of the PCIA for VCE's 2021 rates and the level of PG&E's generation rates for bundled customers. D.20-12-038 resulted in a residential PCIA rate of \$0.04407/kWh for 2017-vintage customers effective January 1, 2021. (The PCIA

rates will be revised on March 1, 2021 to incorporate the Utility Owned Generation revenue requirements.) In comparison, the last ERRA Forecast proceeding established a capped rate of \$0.0317/kWh for the 2017 vintage, an increase from the previous rate of \$0.0267/kWh.

- **Next Steps:** PG&E must file a Tier 1 Advice Letter within 15 days of the date of this decision, including revenue requirement adjustments authorized by D.20-12-005 regarding PG&E's 2020 GRC. This proceeding is now closed.
- **Additional Information:** PG&E [AL 6004-E-C](#) 2021 Annual Electric True-Up – Consolidated Electric Rate Changes Effective January 1, 2021 (December 30, 2020); [D.20-12-038](#) (December 22, 2020); [Motion to Adopt Settlement Agreement](#) (November 20, 2020); PG&E [AL 6004-E](#) Annual Electric True-Up (November 16, 2020); [PG&E November Update](#) (November 9, 2020); [Scoping Memo and Ruling](#) consolidating proceedings (November 5, 2020); [Ruling](#) canceling evidentiary hearing (October 13, 2020); [Scoping Memo and Ruling](#) in the ERRA Trigger proceeding (September 30, 2020); [PUBA Application](#) (September 28, 2020); [Scoping Memo and Ruling](#) (September 12, 2020); [PG&E August Update](#) (August 14, 2020); [PG&E ERRA Trigger Application](#) (July 31, 2020); [PG&E Supplemental Testimony](#) correcting errors in Application (July 17, 2020); [Application](#) (July 1, 2020); Docket Nos. [A.20-07-002](#) (2021 ERRA Forecast); [A.20-07-022](#) (ERRA Trigger); [A.20-09-014](#) (2021 PUBA Trigger).

IRP Rulemaking

On December 8, 2020, the ALJ issued a Ruling granting the December 3, 2020 motion of the Center for Energy Efficiency and Renewable Technologies for a ruling authorizing comments on the evaluation of the IRP process, conducted by Gridworks. Comments were due December 22, 2020. On December 18, 2020, the CPUC held a remote participation workshop addressing the Staff Proposal attached to the November 19 ALJ Ruling that lays out a conceptual foundation for all future procurement informed by the IRP process. On December 22, 2020, the CPUC issued D.20-12-044 establishing a backstop procurement process under D.19-11-016.

- **Background:** In the CPUC's IRP process, the Reference System Portfolio (RSP) is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) after LSEs submit individual IRPs to be used in statewide planning and future procurement. On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016.

The June 15, 2020 ALJ Ruling proposed a three-year cycle for the IRP process, instead of the current structure of conducting each cycle every two years. There would be opportunities for new procurement requirements at least twice during every three-year cycle, beginning with a Q1 2021 Ruling proposing resource procurement, followed by the issuance of a PD/Decision in Q2 2021 ordering additional procurement.

The September 24 Scoping Memo and Ruling clarifies that the issues planned to be resolved into this proceeding are organized into the following tracks:

- **General IRP oversight issues:** The Assigned Commissioner indicates that a Proposed Decision is forthcoming on the issues identified in the June 15 Ruling regarding the possibility of moving from a two-year to a three-year IRP cycle. Other issues to be determined in this track include IRP filing requirements and interagency work implementing SB 100.
- **Procurement track:** First, the proceeding will resolve capacity procurement issues with respect to D.19-11-016. The CPUC will then focus on examining LSE plans to replace Diablo Canyon capacity and conduct an overall assessment and gap analysis to inform a procurement order that could direct LSEs to procure additional capacity. Other issues to be addressed in this track include (1) evaluation of development needs for long-duration

storage, out-of-state wind, offshore wind, geothermal, and other resources with long development lead times; (2) local reliability needs; and (3) analysis of the need for specific natural gas plants in local areas. Additional procurement requirements may also be considered.

- Preferred System Portfolio Development: The CPUC will aggregate LSE portfolios, analyze the aggregate portfolio, and adopt a PSP.
- Transmission Planning Process (TPP): The PSP analysis will likely lead to a portfolio to be transmitted by the CPUC to the CAISO for use in its TPP analysis.
- Reference System Portfolio Development: To the extent that a new round of RSP analysis is conducted for the next IRP cycle, this proceeding will be the venue for developing and vetting the resource assumptions associated with that analysis in preparation for the next IRP cycle.

The Staff Proposal attached to the November 19, 2020 ALJ Ruling lays out a conceptual foundation for all future procurement informed by the IRP process. Staff categorized recommendations into “Phase 1,” intended to be applied during the current IRP cycle through 2021, and “Phase 2,” to be applied starting with the next IRP cycle.

- **Details**: D.20-12-044 establishes a backstop procurement process that would apply to LSEs that did not opt-out of self-procuring their capacity obligations under D.19-11-016. It would require LSEs to file bi-annual (due February 1 and August 1) updates of their procurement progress relative to the contractual and procurement milestones defined in the decision. It does not address cost allocation for backstop procurement, which will be addressed in a later decision. The backstop process would be composed of triggers and milestones that an LSE must meet for its self-procurement efforts in order to avoid creating a need for "emergency" procurement and being held responsible for its share of the backstop procurement costs. After review of the compliance filings, CPUC Staff will bring a Resolution before the Commission specifying the amount of backstop procurement required for a particular IOU on behalf of each LSE for each procurement tranche (2021, 2022, and 2023). Full cost responsibility for backstop procurement will be assigned to the deficient LSE and once a backstop procurement authorization is adopted by the CPUC there will be no "going back" even if an LSE manages to procure additional capacity. In addition, the PD notes that an absence of backstop procurement trigger is not a relief of an LSE's procurement obligations. The CPUC may still initiate compliance and enforcement actions regardless of whether backstop procurement is triggered.
- **Analysis**: D.20-12-044 established a backstop procurement process for procurement ordered under D.19-11-016, which provides more clarity on the process going forward for determining if backstop procurement is needed. However, it is unclear what compliance and enforcement actions the CPUC could undertake for LSEs for which backstop procurement becomes necessary. The Staff Proposal providing a conceptual foundation for all future procurement informed by the IRP process contains a number of proposals that could undermine VCE's procurement autonomy.
- **Next Steps**: Through January 2021, the schedule is as follows:
 - General IRP oversight issues: A Proposed Decision on moving from two-year to three-year IRP cycle is anticipated to be issued soon.
 - Procurement track: Comments from parties on specific aspects of the Staff Proposal will be requested after the workshop. During the remainder of 2020, Commission staff will conduct analysis of LSE commitments to address Diablo Canyon replacement power, as included in individual IRPs. In January 2021, the CPUC will issue a Ruling with its Diablo Canyon replacement power analysis, gap analysis, and proposing procurement strategy for any additional needed power, along with a proposed broader framework for IRP procurement.

- Preferred System Portfolio Development: Ruling on resubmittals of information for deficient LSE IRPs, if needed, is anticipated in 2020.
- TPP: The Proposed Decision recommending portfolio(s) for 2021-22 TPP is anticipated to be issued in January 2021.
- Reference System Portfolio Development: N/A.
- **Additional Information**: [D.20-12-044](#) establishing a backstop procurement process (December 22, 2020); [Ruling](#) requesting comments on IRP evaluation (December 8, 2020); [Ruling](#) providing Staff Proposal on resource procurement framework (November 19, 2020); [Proposed Decision](#) on backstop procurement mechanism (November 13, 2020); [Ruling](#) on Portfolios for 2021-2022 Transmission Planning Process (October 20, 2020); [Email Ruling](#) requesting comments on individual LSE IRPs (October 9, 2020); [Scoping Memo and Ruling](#) (September 24, 2020); [Resolution E-5080](#) (August 7, 2020); [Ruling](#) on IRP cycle and schedule (June 15, 2020); [Ruling](#) on backstop procurement and cost allocation mechanisms (June 5, 2020); [Order Instituting Rulemaking](#) (May 14, 2020); Docket No. [R.20-05-003](#).

RPS Rulemaking

On December 11, 2020, the ALJ issued a Proposed Decision on draft 2020 RPS Procurement Plans, directing retail sellers including VCE to file final 2020 RPS Procurement Plans, as modified to comply with the guidance therein, within 30 days of a final decision being issued (i.e., no sooner than February 14, 2021). Parties filed comments in response to the PD on December 31, 2020.

- **Background**: This proceeding addresses ongoing RPS issues. VCE submitted its 2020 RPS Procurement Plan on July 6, 2020 and its 2019 RPS Compliance Report on August 3, 2020. On August 12, 2020, VCE filed a Motion requesting to update its 2020 RPS Procurement Plan to make several minor clerical corrections to its Plan and noting to the CPUC that VCE anticipated terminating its PPA with Rugged Solar in August 2020.

On February 27, 2020, the ALJ issued a Ruling requesting comments on a Staff Proposal making changes to confidentiality rules regarding the RPS program. No subsequent action has been taken by the CPUC on this proposal to date.

Staff's Proposed Framework for integrating RPS Procurement Plan requirements into the IRP proceeding uses a two-phased approach that makes a relatively minor change to RPS reporting in the current IRP cycle, while fully integrating all elements of RPS Procurement Plans into the next IRP cycle, proposed to commence in the 2023 calendar year (instead of 2022, under the current two-year cycle, although the issue of a two-year versus three-year cycle is not discussed).

- **Details**: The Proposed Decision identifies where VCE has achieved compliance and provides specific guidance on how VCE's draft RPS Procurement Plan needs to be modified in the final RPS Procurement Plan to achieve compliance on remaining sections. A large group of Joint CCAs filed comments contesting the CPUC's statutory authority to adopt criteria for bid selection and evaluation (including least-cost best-fit methodologies) and to apply the minimum margin of procurement methodology to CCAs.
- **Analysis**: The PD largely praised VCE's draft 2020 RPS Procurement Plan, pointing to it as a "best example" or "best practice" in seven sections of the Plan for other LSEs to emulate in their updates. The PD also identified several areas for VCE to update or modify in its final RPS Procurement Plan submission. The PD's specificity in detailing best examples and areas needing improvement reduces the uncertainty for how draft plans need to be modified to achieve compliance compared to prior years.

Other issues to be addressed in this proceeding could further impact future RPS compliance obligations.

- **Next Steps:** Reply comments on the PD are due January 5, 2021. VCE plans to file a final RPS Plan with updates, as directed by and specified in the PD. A PD aligning RPS and IRP filings is also anticipated to be issued soon.

It is unclear if the CPUC intends to issue a PD regarding RPS confidentiality and transparency issues, as had been proposed in a February 2020 Ruling.

- **Additional Information:** [Proposed Decision](#) on 2020 RPS Procurement Plans (December 11, 2020); [Order Granting Rehearing](#) of [D.17-08-021](#) (November 23, 2020); PG&E [AL 5994-E](#) reopening ReMAT program (November 6, 2020); [D.20-10-005](#) resuming and modifying the ReMAT program (October 16, 2020); [D.20-09-022](#) on new CCA 2019 RPS Procurement Plans (approved at CPUC’s September 24, 2020 meeting); [Ruling](#) on [Staff proposal](#) aligning RPS/IRP filings (September 18, 2020); [D.20-08-043](#) resuming and modifying the BioMAT program (September 1, 2020); [VCE Motion to Update](#) its 2020 RPS Procurement Plan (August 12, 2020); [Ruling](#) extending procedural schedule on RPS Procurement Plan review (July 10, 2020); Assigned Commissioner [Ruling \(ACR\)](#) establishing 2020 RPS Procurement Plan requirements (May 6, 2020); [D.20-02-040](#) correcting D.19-12-042 on 2019 RPS Procurement Plans (February 21, 2020); [Ruling](#) on RPS confidentiality and transparency issues (February 27, 2020); [D.19-12-042](#) on 2019 RPS Procurement Plans (December 30, 2019); [D.19-06-023](#) on implementing SB 100 (May 22, 2019); [Ruling](#) extending procedural schedule (May 7, 2019); [Ruling](#) identifying issues, schedule and 2019 RPS Procurement Plan requirements (April 19, 2019); [D.19-02-007](#) (February 28, 2019); [Scoping Ruling](#) (November 9, 2018); Docket No. [R.18-07-003](#).

RA Rulemaking (2021-2022)

The CPUC issued D.20-12-006 resolving Track 3.A issues on December 4, 2020. On December 11, 2020, the Assigned Commissioner issued a Scoping Memo and Ruling to modify the scope and schedule of Track 3B and designate the scope and schedule of Track 4. On December 21, 2020, parties filed revised proposals and the ALJ issued a Ruling providing Energy Division’s revised issue paper and draft straw proposal regarding Track 3B.2 issues. On December 18, 2020, the Energy Division approved VCE’s Advice Letter 5-E, granting VCE’s request for a waiver of penalties associated with deficiencies in its local RA procurement in its year-ahead 2021 filing.

- **Background:** This proceeding is divided into 4 tracks. The first two tracks have concluded, and the proceeding is now focused on Track 3B.1, 3B.2, and Track 4 issues, described in more detail below. Track 3B.1 is considering incentives for LSEs that are deficient in year-ahead RA filings, refinements to the MCC buckets adopted in D.20-06-031, and other time-sensitive issues. Track 3B.2 includes examination of the broader RA capacity structure to address energy attributes and hourly capacity requirements. Track 4 will consider the 2022 program year requirements for System and Flexible RA, and the 2022-2024 Local RA requirements.
- **Details:** D.20-12-006 addressed the issues of the financial credit mechanism and competitive neutrality rules for the central procurement entities, PG&E and SCE. For reference, in adopting the central procurement framework in D.20-06-002, the CPUC recognized that a financial credit mechanism could provide LSEs with additional incentives for investments in preferred and energy storage local resources in constrained local areas but rejected a CalCCA proposal to give a one-for-one MW value to LSEs for existing preferred or energy storage local resources shown to the CPE. D.20-12-006 would find that the most workable solution proposed was CalCCA’s proposed “Option 2,” with modifications, which allows the CPE to evaluate the shown resource alongside bid resources to assess the effectiveness of the portfolio. The financial credit mechanism will apply only to new preferred or energy storage resources (i.e., non-fossil-based resources) with a contract executed on or after June 17, 2020. It also adopts PG&E’s competitive neutrality proposal for PG&E’s service territory and SCE’s competitive neutrality proposal for SCE’s service. Finally, D.20-12-006 finds that the Local Capacity Requirements Working Group should continue to discuss recommendations and develop solutions for consideration in CAISO’s 2022 LCR process, and notes there will be an opportunity to provide comments on the behind-the-meter hybrid solar/storage workshop, scheduled for November 2020, in Track 4 of this proceeding.

The Scoping Memo and Ruling divides Track 3B into two sub-tracks to separate the larger structural changes that may require additional process following the June 2021 decision, from other interim changes. The scope of Track 3B.1 will include consideration of incentives for LSEs that are deficient in year-ahead RA filings, refinements to the MCC buckets adopted in D.20-06-031, and other time-sensitive issues. The scope of Track 3B.2 includes examination of the broader RA capacity structure to address energy attributes and hourly capacity requirements. Track 4 issues include adoption of (1) 2022-2024 Local Capacity Requirements (LCR), (2) 2022 Flexible Capacity Requirements (FCR), and (3) 2022 System RA requirements. Track 4 will also consider other refinements to the RA program, including capacity values for Behind-the-Meter hybrid storage/solar resources and a Demand Response Working Group Report on Load Impact Protocol and Qualifying Capacity recommendations.

The December 21, 2020, Ruling attaches Energy Division's revised Track 3B.2 proposal, updating its August 7, 2020 proposal. Revisions include providing additional data analysis on forward contracting positions from LSEs' IRP filings, further detail regarding a proposed bid cap to be incorporated into the RA regulatory construct, and additional details to the Standard Forward Fixed Price Contract proposal.

- **Analysis:** Regulatory developments under consideration in this proceeding could have a significant impact on VCE's capacity procurement obligations and RA compliance filing requirements. A broad array of changes to the RA construct are under consideration, including the consideration of hourly capacity requirements in light of the increasing deployment of use-limited resources; modifications to maximum cumulative capacity buckets and whether the RA program should cap use-limited and preferred resources such as wind and solar; the potential expansion of multi-year local forward RA to system or flexible resources; RA penalties and waivers; and Marginal ELCC counting conventions for solar, wind and hybrid resources. The resolution of these issues could impact the extent to which VCE is permitted to rely on use-limited resources such as solar and wind to meet its RA obligations, the amount of RA that is credited to these types of resources, and what penalties (and waivers) would apply should there be a deficiency in meeting an RA requirement.
- **Next Steps:** Track 3B.1: Revised Track 3B.1 proposals are due January 28, 2021; a workshop on Track 3B.1 proposals will be scheduled for February; comments are due March 12, 2021; reply comments are due March 26, 2021; and a Proposed Decision is expected May 2021.

Track 3B.2: A workshop focused on the forward energy requirements construct proposed by Energy Division in its Track 3B issue paper and straw proposal is scheduled for January 8, 2021; Comments on revised Track 3B.2 proposals are due January 15, 2021; a workshop on revised Track 3B.2 proposals is anticipated for February 2021; second revised Track 3B proposals are due February 26, 2021; comments are due March 12, 2021; reply comments are due March 23, 2021; and a Proposed Decision is expected May 2021.

Track 4: The Draft LCR Working Group Report is due January 22, 2021; Track 4 proposals are due January 28, 2021; the final LCR Working Group Report is due February 12, 2021; a workshop on Track 4 proposals will be held in February; comments are due March 12, 2021; reply comments are due March 26, 2021; and a Proposed Decision is expected May 2021.

- **Additional Information:** [Ruling and Addendum](#) to Energy Division Issue Paper and Draft Straw Proposal for Consideration in Track 3B.2 of Proceeding R.19-11-009 (December 21, 2020); [Scoping Memo and Ruling](#) for Track 3B and Track 4 (December 11, 2020); [D.20-12-006](#) on Track 3.A issues (December 4, 2020); [Ruling](#) denying OhmConnect motion for partial stay of 8.3% DR cap (October 20, 2020); [Ruling](#) (September 23, 2020); [Ruling](#) providing Energy Division's Track 3.B proposal (August 7, 2020); [Amended Scoping Memo](#) on Track 3 (July 7, 2020); [D.20-06-031](#) on local and flexible RA requirements and RA program refinements (June 30, 2020); [Ruling](#) suspending Track 3 schedule (June 23, 2020); [2021 Final Flexible Capacity Needs Assessment](#) (May 15, 2020); [2021 Final Local Capacity Technical Study](#) (May 1, 2020); [Scoping Memo and Ruling](#) (January 22, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

Wildfire Fund Non-Bypassable Charge (AB 1054)

On December 21, 2020, the CPUC issued D.20-12-024 that continues the Wildfire Non-Bypassable Charge (NBC) of \$0.00580/kWh for January 1, 2021, through December 31, 2021, and closes this proceeding.

- **Background:** This rulemaking implemented AB 1054 and extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The scope of this proceeding was limited to consideration of whether the CPUC should authorize ratepayer funding of the Wildfire Fund established by AB 1054, enacted in July 2019, via the continuation of an existing non-bypassable charge (Department of Water Resources bond charge) that would have otherwise expired by the end of 2021.

D.19-10-056, issued in October 2019, approved the establishment of a non-bypassable charge on IOU customers to provide revenue for the newly established state Wildfire Fund pursuant to 2019 AB 1054. The charge will only be assessed on customers of utilities that participate in the Wildfire Fund (i.e., PG&E, SCE, and SDG&E), and will expire at the end of 2035. The Decision also provides that once a large IOU commits to Wildfire Fund participation, it may not later revoke its participation. The annual revenue requirement for the charge among the large IOUs will total \$902.4 million, allocated at \$404.6 million for PG&E, \$408.2 million for SCE, and \$89.6 million for SDG&E. Residential CARE and medical baseline customers are exempt.

- **Details:** D.20-12-024 approves the Wildfire Fund NBC at its current level of \$0.00508/kWh for 2021 and closes the proceeding.
- **Analysis:** This proceeding established a new non-bypassable charge of \$0.00580/kWh from eligible VCE customers beginning October 1, 2020, to fund the Wildfire Fund under AB 1054. The same charge will continue for calendar year 2021.
- **Next Steps:** This proceeding is now closed.
- **Additional Information:** [D.20-12-024](#) (December 21, 2020); [D.20-09-023](#) adopting 2020 Wildfire NBC (September 30, 2020); [D.20-07-014](#) approving servicing orders (July 24, 2020); [D.20-02-070](#) denying Application for Rehearing (March 2, 2020); [D.19-10-056](#) approving a non-bypassable charge (October 24, 2019); [Scoping Memo and Ruling](#) (August 14, 2019); [Order Instituting Rulemaking](#) (August 2, 2019); Docket No. [R.19-07-017](#). See also [AB 1054](#).

PG&E's Phase 1 GRC

The CPUC issued D.20-12-005 resolving PG&E's Phase 1 GRC on December 11, 2020.

- **Background:** PG&E's three-year GRC covers the 2020-2022 period. For 2020, it has requested an additional \$1.058 billion (from \$8.518 billion to \$9.576 billion), or a 12.4% increase over its 2019 authorized revenue requirement, comprised of increases related to its gas distribution (\$2.097 billion total, or a \$134 million increase), electric distribution (\$5.113 billion total, or a \$749 million increase), and generation (\$2.366 billion total, or a \$175 million increase) services. If approved, it would increase a typical monthly residential electric (500 kWh) and natural gas (34 therms) customer bill by \$10.57, or 6.4%, comprised of an electric bill increase of \$8.73 and a gas bill increase of \$1.84. For 2021 and 2022, PG&E requested total increases of \$454 million and \$486 million, respectively. PGE's GRC does not include a request for cost recovery related to 2017 and 2018 wildfire liabilities.

The Settlement Agreement, filed December 30, 2019, would result in an increase in PG&E's 2020 revenue requirement of \$575 million (i.e., \$483 million lower than PG&E's original request), with additional increases of \$318 million, or 3.5% in 2021, and \$367 million, or 3.9%, in 2022. The Settlement Agreement would result in PG&E withdrawing its proposal for a non-bypassable charge related to its hydroelectric facilities. It would require PG&E to develop new and enhanced

reporting to provide increased visibility into the work it performed. It also provides for PG&E's ability to purchase insurance coverage up to \$1.4 billion to protect against wildfire risk and other liabilities, reflected in PG&E's forecast as a cost of \$307 million. The consolidated 2020 electric and gas bill impact would be 3.4%.

- **Details:** D.20-12-005 adopts, with modifications, the Settlement Agreement filed in December 2019. It adopts a 2020 test year revenue requirement of \$9.102 billion, which is an increase of \$584 million, or 6.9%, over the authorized base revenue requirement for 2019. In addition, it allows PG&E to raise rates an additional \$316 million, or 3.5%, for 2021 and \$364 million, or 3.9%, for 2022. **However, both the 2020 and 2021 impacts would be incorporated in March 2021, resulting in an average residential customer seeing a monthly bill increase of \$13.44 (\$10.40 for electric and \$3.05 for gas), or 8.1%, in 2021.** Modifications to the Settlement Agreement include more stringent filing requirements for recovery of undercollections tracked by certain regulatory accounts and for closure of certain customer services branch offices. It also applies the 4% cap on the percentage of residential customer accounts that PG&E can disconnect from utility service in this GRC cycle pursuant to D.20-06-003.

The decision allows PG&E to maintain its current functionalization of Customer Care costs, allocating Customer Care costs between gas distribution and electric distribution functions, based on the number of gas and electric service agreements. However, it directs PG&E to provide in its next GRC a better showing of its cost functionalization process in response to Joint CCA arguments, including directing PG&E to provide detailed testimony showing and justifying how it allocates costs across its various utility functions, including how it derives its functional allocations. D.20-12-005 does not adopt Joint CCA's recommendation to reject the \$10 million decommissioning revenue requirement for PG&E generation assets. It also does not adopt Joint CCA recommendations regarding Resilience Zone issues, such as a request to accommodate generation that the CCAs procure, determining it is out of the scope and more appropriately addressed in R.19-09-009. Likewise, it finds the issue raised by Joint CCAs regarding access to grid modernization data is more appropriately addressed in R.14-08-013.

- **Analysis:** PG&E's rates will increase significantly effective March 1, 2021, as a result of the final decision in this proceeding. PG&E's GRC application had proposed shifting substantial costs associated with its hydroelectric generation from its generation rates (applicable only to its bundled customers) into a non-bypassable charge affecting all of its distribution customers, including VCE customers. However, that proposal was withdrawn under the adopted Settlement Agreement.
- **Next Steps:** This proceeding will be closed, as settling parties have filed a notice accepting the changes made to the Settlement Agreement.
- **Additional Information:** [D.20-12-005](#) (December 11, 2020); [Ruling](#) setting oral argument (October 29, 2020); [Proposed Decision](#) (October 23, 2020); [PG&E Motion](#) to update the Settlement Agreement (August 13, 2020); [Ruling](#) adopting confidential modeling procedures (August 13, 2020); [E-mail Ruling](#) granting in part PG&E's Motion for Official Notice and Joint CCAs Motion to file sur-reply (June 5, 2020); Joint CCAs' [PG&E Motion](#) for Official Notice of Facts (January 27, 2020); [Joint Motion](#) for Settlement Agreement (January 14, 2020); [E-Mail Ruling](#) modifying procedural schedule (December 2, 2019); [E-Mail Ruling](#) suspending briefing deadlines (November 25, 2019); [D.19-11-014](#) (November 14, 2019); [Ruling](#) setting public participation hearings (May 7, 2019); [Scoping Memo and Ruling](#) (March 8, 2019); [Joint CCAs' Protest](#) (January 17, 2019); [Application](#) and [PG&E GRC Website](#) (December 13, 2018); Docket No. [A.18-12-009](#).

PG&E's Phase 2 GRC

PG&E hosted settlement discussions on December 4, 2020, and December 10, 2020, with seven additional calls on various subjects subsequently held in December, with additional calls scheduled for

January 2021. On December 18, 2020, PG&E filed a Motion requesting the CPUC consolidate all of the real-time pricing issues in this proceeding and in A.20-10-011 into one or the other proceeding.

- **Background:** PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. PG&E's pending Phase 1 GRC (filed in December 2018 via a separate proceeding) will set the revenue requirement that will carry through to the rates ultimately adopted in this proceeding.

In this proceeding, PG&E seeks modifications to its rates for distribution, generation, and its public purpose program (PPP) non-bypassable charge. PG&E proposes to implement a plan to move all customer classes to their full cost of service over a six-year period (the first three years of which are covered by this GRC Phase 2) via incremental annual steps. PG&E proposes to use marginal costs for purposes of revenue allocation and to adjust distribution one-sixth of the way to full cost of service each year over a six-year transition period.

Of note, PG&E is proposing changes to the DA/CCA event-based fees that were not updated in the 2017 Phase 2 GRC proceeding. In addition, PG&E proposes to remove the PCIA revenue from bundled generation revenue and allocate that cost separately to bundled customers, collecting the PCIA from bundled customers on a non-time differentiated, per-kWh basis (i.e., the same way it is collected from DA/CCA customers). PG&E will continue to display the PCIA with other generation charges on customer bills, but will unbundle the PCIA as part of unbundled charges in each rate schedule.

Joint CCAs' testimony recommended that:

- PG&E present class- and vintage-specific PCIA rates on individual rate schedules, consistent with other NBCs for both bundled and unbundled customers.
 - The CPUC not allow PG&E to offer Economic Development Rate Generation rates below PG&E's Marginal Generation Cost of Service.
 - PG&E's E-ELEC offering should be analyzed further and refined in a proceeding that allows more detailed consideration in rate making.
 - The Commission adopt PG&E's proposal regarding minimum time-of-use rates such that no proposed retail rate is below the PCIA.
- **Details:** Settlement discussions are ongoing, and PG&E's December 18, 2020 Status Report requested modifications to the procedural schedule to continue the discussions into January and provide another Status Report on January 22, 2021.
 - **Analysis:** This proceeding will not impact the transparency between a bundled and unbundled customer's bills because of the Working Group 1 decision in the PCIA rulemaking, though the JCCAs recommend in testimony that more transparency be reflected in utility tariffs. However, it will affect the allocation of PG&E's revenues requirements among VCE's different rate classes. It will also affect distribution and PPP charges paid by VCE customers to PG&E. Further, PG&E includes a cost-of-service study the purpose of which is to establish the groundwork for separating net metering customers into a separate customer class in the utility's next rate case. If PG&E's proposed CCA fee revisions are adopted, it could increase the cost VCE pays to PG&E for various services, to the extent VCE uses these services.
 - **Next Steps:** Rebuttal testimony is due February 15, 2021. An evidentiary hearing is tentatively scheduled for March 1-12, 2021. A CPUC decision is anticipated for September 2021.
 - **Additional Information:** [PG&E Status Report](#) (December 18, 2020); [Motion to Consolidate](#) (December 18, 2020); [D.20-09-021](#) on EUS budget (September 28, 2020); [Ruling](#) scheduling public participation hearings (August 20, 2020); [Ruling](#) extending procedural schedule (July 13, 2020); [Exhibit \(PG&E-5\)](#) (May 15, 2020); [Scoping Memo and Ruling](#) (February 10, 2020); [Application, Exhibit \(PG&E-1\): Overview and Policy, Exhibit \(PG&E-2\): Cost of Service, Exhibit \(PG&E-3\): Revenue Allocation, Rate Design and Rate Programs, and Exhibit \(PG&E-4\): Appendices](#) (November 22, 2019); Docket No. [A.19-11-019](#).

PG&E Regionalization Plan

Parties filed comments on December 16, 2020, on the Scoping Memo and Ruling.

- Background:** PG&E was directed to file a regionalization proposal as a condition of CPUC approval of its Plan of Reorganization in I.19-09-016. On June 30, 2020, PG&E filed its regionalization proposal, which describes how it plans to reorganize operations into new regions. PG&E proposes to divide its service area into five new regions: North Coast, Sierra, Bay Area, Central Coast, and Central Valley. The regional boundaries will align with county boundaries. Yolo County would be part of PG&E Region 1 (North Coast), grouped together with the following counties: Colusa, Glenn, Humboldt, Lake, Mendocino, Napa, Sacramento, Solano, Sonoma, and Trinity. PG&E will appoint a Regional Vice President by June 2021 to lead each region, along with Regional Safety Directors to lead its safety efforts in each region.

The new regions would include five functional groups that report to the Regional Vice President encompassing various functions including: (1) Customer Field Operations, (2) Local Electric Maintenance and Construction, (3) Local Gas M&C, (4) Regional Planning and Coordination, and (5) Community and Customer Engagement. Other functions will remain centralized, such as electric and gas operations, risk management, enterprise health and safety, the majority of existing Customer Care and regulatory and external affairs, supply, power generation, human resources, finance, and general counsel. PG&E will propose in a separate proceeding the enterprise-level safety and operational metrics it is developing that could also be considered to evaluate the effectiveness of its regionalization implementation. PG&E proposes a phased implementation, with progress establishing all regions in 2021, although some functions would not be fully shifted until 2022. PG&E also proposes to establish a Regional Plan Memorandum Account to record any incremental costs PG&E may incur in connection with development and implementation of regionalization.

In August, parties filed protests and responses to PG&E's application. Of note, South San Joaquin Irrigation District filed a Protest arguing that PG&E's regionalization effort should not create a moratorium or interfere with municipalization efforts. In addition, five CCAs filed responses or protests to PG&E's application, with MCE and EBCE filing protests and City of San Jose, City and County of San Francisco, and Pioneer Community Energy filing responses. CCA responses/protests sought more information on the implications of regionalization on CCA customers, CCA operations, and CCA-PG&E coordination; PG&E's overarching purpose, goals, and metrics to judge success of regionalization; the delineation between centralized and decentralized functions in PG&E's application; and budgets and cost recovery related to regionalization, among other issues. CCAs also identified various concerns specific to their CCAs (e.g., EBCE's and MCE's service areas would both be split across two PG&E regions; SJCE expressed concern with its service area being assigned to the Central Coast region; Pioneer expressed concern that it would be the only CCA in its region, which would be the only region not to be "anchored" by an urban area).

- Details:** The October Scoping Memo and Ruling determined the scope of this proceeding will include examining (1) whether PG&E should be authorized to implement its Regionalization Proposal, as modified in this proceeding; (2) whether PG&E's proposed five regional boundaries are reasonable; (3) whether PG&E's proposals for regional leadership and a regional organizational structure are consistent with the Commission's direction; (4) whether PG&E's proposed implementation timeline for regionalization is reasonable; (5) whether PG&E's regionalization proposal is reasonable, including its impact on safety and its cost effectiveness; (6) the adequacy and completeness of PG&E's regionalization plan; (7) the process and timeline for regionalization, the cost of regionalization, the criteria to be used for identifying and delineating regions, and the division of responsibilities and decision-making between PG&E's central office and its regional offices; and (8) issues relating to potential cost recovery and the corresponding ratemaking treatment. The Scoping Memo and Ruling did not discuss how

municipalization proposals would be impacted by PG&E’s regionalization plan, which had been the subject of a Protest of PG&E’s application filed by South San Joaquin Irrigation District.

- **Analysis:** As noted in the responses and protests of CCAs, the implications of PG&E’s regionalization plan on CCA operations, customers, and costs is largely unclear based on the information presented in PG&E’s application. PG&E’s regionalization plan could impact PG&E’s responsiveness and management of local government relations and local and regional issues, such as safety, that directly impact VCE customers beginning in 2021. It could also impact municipalization efforts, although this issue has not been explicitly addressed and remains unclear at this time. As part of Region 1, VCE would be grouped with several coastal and northern counties.
- **Next Steps:** An updated PG&E proposal is due January 14, 2020, a workshop will be held the week of January 25, 2021, and comments are due February 24, 2021. PG&E must engage its Regional Vice Presidents and Regional Safety Directors by June 1, 2021.
- **Additional Information:** [Scoping Memo and Ruling](#) (October 2, 2020); [Application](#) (June 30, 2020); [A.20-06-011](#).

PCIA Rulemaking

On December 16, 2020, the Assigned Commissioner issued an Amended Scoping Memo and Ruling.

- **Background:** D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity. In the Joint IOUs’ PFM of D.18-10-019 in this proceeding, filed concurrently with a PFM of D.17-08-026 in R.02-01-011, the Joint Utilities requested changes to the calculations for applying line losses in the PCIA calculations. First, the Joint IOUs argued that the current formula incorrectly applies line loss adjustments to the RA component of the PCIA calculation. Second, the Joint IOUs argued that the PCIA Template is inconsistent in its application of line losses with respect to the calculation of energy market value. The net impact of these two issues, according to the Joint Utilities, is an overstated forecast of portfolio market value with all customers initially underpaying the PCIA.

Phase 2 relied primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

D.20-08-004, in response to the recommendations of Working Group 2, (1) adopted the consensus framework of PCIA prepayment agreements; (2) adopted the consensus guiding principles, except for one principle regarding partial payments; (3) adopted evaluation criteria for prepayment agreements; (4) did not adopt any proposed prepayment concepts; and (5) clarified that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

The CPUC has not yet issued a Proposed Decision regarding Working Group 3.

- **Details:** The Amended Scoping Memo and Ruling adds four issues to the scope of Phase 2 of this proceeding:
 - Should the Commission remove or modify the PCIA cap?
 - Should the Commission modify deadlines or requirements of ERRA and PCIA related submittals and reports in order to increase time for parties to review PCIA data and to facilitate timely implementation of decisions in the ERRA proceedings?

- Should the Commission adopt a methodology for crediting or charging customers who depart from the utility service during an amortization period and who are responsible for a balance in the PCIA Undercollection Balancing Account, the Energy Resource Recovery Account, or any other bundled generation account?
- Should the Commission consider any other changes necessary to ensure efficient implementation of PCIA issues within ERRRA proceedings?
- **Analysis:** The 2021 PCIA rate will be implemented through the 2021 ERRRA Forecast proceeding, described above.
- **Next Steps:** Comments to the questions in Attachment A of the Amended Scoping Memo and Ruling are due January 22, 2021, and reply comments are due February 5, 2021. A PD is anticipated to be issued in Q2 2021.
- **Additional Information:** [Amended Scoping Memo and Ruling](#) (December 16, 2020); [CalCCA/DACC/ARem Protest of PG&E AL 5973-E](#) (November 2, 2020); [PG&E AL 5973-E](#) (October 12, 2020); [CalCCA/DACC Response](#) to Joint IOU AL on D.20-03-019 (September 21, 2020); [Joint IOUs PFM of D.18-10-019](#) (August 7, 2020); [D.20-08-004](#) on Working Group 2 PCIA Prepayment (August 6, 2020); [D.20-06-032](#) denying PFM of D.18-07-009 (July 3, 2020); [D.20-03-019](#) on departing load forecast and presentation of the PCIA (April 6, 2020); [Ruling](#) modifying procedural schedule for working group 3 (January 22, 2020); [D.20-01-030](#) denying rehearing of D.18-10-019 as modified (January 21, 2020); [D.19-10-001](#) (October 17, 2019); [Phase 2 Scoping Memo and Ruling](#) (February 1, 2019); [D.18-10-019](#) Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); [D.18-09-013](#) Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. [R.17-06-026](#).

Investigation into PG&E Violations Related to Wildfires

On December 4, 2020, the CPUC issued D.20-12-015, making one minor modification for clarification and denying applications for rehearing of D.20-05-019 (which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires) filed by Thomas Del Monte and the Wild Tree Foundation.

- **Background:** The scope of the proceeding included violations of law by PG&E with respect to the 2017 and 2018 wildfires, including the 2017 Tubbs Fire and the 2018 Camp Fire, what penalties should be assessed, what remedies or corrective actions should occur, and what if any systemic issues contributed to the ignition of the wildfires. SED issued a Fire Report on June 13, 2019 that found deficiencies in PG&E's vegetation management practices and procedures and equipment operations in severe conditions. CAL FIRE also found that PG&E's electrical facilities ignited all but one of the fires addressed in this investigation. This investigation ordered PG&E to take immediate corrective actions to come into compliance with CPUC requirements.

The terms of the Settlement Agreement between PG&E, SED, the CPUC's Office of the Safety Advocate, and CUE would have resulted in \$1.675 billion in PG&E penalties. Specifically, PG&E would not have been permitted seek rate recovery of wildfire-related expenses and capital expenditures totaling \$1.625 billion. In addition, PG&E would have been required to spend \$50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives.

The Presiding Officer's Decision provided for penalties on PG&E totaling \$2.137 billion. The total included an increase of \$198 million in the disallowances for wildfire-related expenditures that was provided in the Settlement Agreement. It also increased PG&E's System Enhancement Initiatives and corrective actions by \$64 million and added a \$200 million fine payable to the General Fund. In total, these changes increased PG&E's penalties by \$462 million relative to the Settlement Agreement. The Presiding Officer's Decision also required any tax savings associated with the shareholder payments under the settlement agreement, as modified by this decision, to be returned to the benefit of ratepayers.

D.20-05-019 approved with modifications the Settlement Agreement, as provided in Commissioner Rechtschaffen's "Decision Different." It approved penalties totaling \$2.137 billion, however the \$200 million fine payable to the General Fund is permanently suspended, resulting in an effective penalty total of \$1.937 billion. In addition, the decision required any tax savings associated with the shareholder obligations for *operating expenses* under the Settlement Agreement (but not tax savings associated with capital expenditures, in order to avoid any potential legal conflict with IRS normalization rules) to be returned to the benefit of ratepayers in PG&E's next GRC. Finally, the decision rejected PG&E's attempt to classify the \$200 million fine as a Fire Victim Claim or Fire Claim.

- **Details:** The Wild Tree Foundation and Thomas Del Monte each filed Applications for Rehearing (attached) of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires. The Applications for Rehearing both challenged the permanent suspension of the \$200 million fine imposed on PG&E, as well as other aspects of the settlement that was approved with modifications. D.20-12-015 denied the applications for rehearing and made a minor clarification.
- **Analysis:** D.20-05-019 resulted in the largest penalty in CPUC history. It required additional spending by PG&E to mitigate future wildfire risk, potentially positively impacting the quality of service experienced by VCE customers. The decision did not hinder PG&E's reorganization plan from moving forward, whereas PG&E had argued that provisions in the original Presiding Officer's Decision could have imperiled the plan.
- **Next Steps:** There are no remaining items to address in this proceeding, which is closed.
- **Additional Information:** [D.20-12-015](#) (December 3, 2020); [Thomas Del Monte Application for Rehearing](#) (June 8, 2020); [Wild Tree Foundation Application for Rehearing](#) (June 8, 2020); [D.20-05-019](#) (May 8, 2020); [Decision Different](#) of Commissioner Rechtschaffen (April 20, 2020); [Motion](#) by Commissioner Rechtschaffen (March 27, 2020); [Presiding Officer's Decision](#) approving the settlement agreement with modifications (February 27, 2020); [Joint Motion for Approval of Settlement Agreement](#) (December 17, 2019); [Amended Scoping Memo and Ruling](#) (October 28, 2019); GO 95 [Rule 31.1](#); GO 95 [Rule 35](#); GO 95 [Rule 38](#); [Order Instituting Investigation](#) (June 27, 2019); Docket No. [I.19-06-015](#).

Direct Access Rulemaking

No updates this month. On October 16, 2020, and October 26, 2020, respectively, parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding a potential additional expansion of direct access (DA) for nonresidential customers.

- **Background:** In Phase 1 of this proceeding, the CPUC allocated the additional 4,000 GWh of direct access load required by SB 237 (2018, Hertzberg) among the three IOU territories with implementation to begin January 1, 2021.

For Phase 2, the CPUC will address the SB 237 mandate requiring the CPUC to, by June 1, 2020, provide recommendations to the Legislature on "implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory." The Commission is required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies.

- **Details:** The September 28, 2020 Ruling attached a Staff Report constituting the draft CPUC recommendations to the Legislature required by SB 237. The Staff Report recommends that the Legislature:

- Not make a determination as to whether to further expand DA until at least 2024, after the conclusion of the 2021-24 RPS compliance period and the fulfillment of procurement ordered by D.19-11-016.
- Condition any further DA expansion on the performance of Energy Service Providers (ESPs) with respect to IRP, RPS and RA requirements through 2024.
- Make any further DA expansion in increments of 10% of nonresidential load per year, conditioned on ESP ongoing compliance with IRP, RPS and RA requirements.
- “[C]onsider the CPUC’s authority in allowing CCAs to recover the costs of investments that are stranded because of unforeseen load departure to address these potential impacts.”
- "Amend P.U. Code Section 949.25 to provide the CPUC with the authority to revoke ESP licenses and CCA registration for repeated non-compliance with [RA], RPS or IRP requirements."

CalCCA’s comments argued that the CPUC should add a condition for reopening DA that will foster attainment of state goals and ensure competitive neutrality for all LSEs. CalCCA recommended establishing a Phase 3, Track 1 process for further development of DA reopening conditions, including competitively neutral switching rules, rules governing CCA stranded cost recovery, clear compliance metrics, and ESP transparency measures. Furthermore, CalCCA recommended establishing a Phase 3, Track 2 to be implemented following the issuance of 2021-2024 Renewable Portfolio Standard (RPS) compliance reports to assess readiness for DA reopening.

ESPs argued against delaying a Legislative determination on further DA reopening, for a faster pace of DA reopening, and that access to additional load should depend on the compliance of each ESP, rather than compliance of all ESPs. Both DA advocates and IOUs opposed stranded asset recovery by CCAs.

- **Analysis:** This proceeding will impact the CPUC’s recommendations to the Legislature regarding the potential future expansion of DA in California, including a potential lifting of the existing cap on nonresidential DA transactions altogether. Further expansion of DA in California could result in non-residential customer departures from VCE and make it more difficult for VCE to forecast load and conduct resource planning. CalCCA has argued that further expansion of nonresidential DA is likely to adversely impact attainment of the state’s environmental and reliability goals and will result in cost-shifting to both bundled and CCA customers. The Staff report recognizes this concern and recommends that if DA is further expanded, the Legislature consider permitting CCAs to recover stranded costs from departing DA customers. The Staff report also recommends the Legislature amend the statute to allow the CPUC to revoke both ESP licenses and CCA registration for repeated non-compliance of RA, RPS, or IRP requirements.
- **Next Steps:** A proposed decision attaching the final staff report is anticipated to be issued next.
- **Additional Information:** [Ruling](#) and [Staff Report](#) (September 28, 2020); [Amended Scoping Memo and Ruling](#) adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. [R.19-03-009](#); see also [SB 237](#).

RA Rulemaking (2019-2020)

No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.

- **Background:** This proceeding had three tracks, which have now concluded. [Track 1](#) addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program. D.19-10-020 purported to affirm existing RA rules regarding imports, but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource

specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market.

In Track 2, the CPUC previously adopted multi-year Local RA requirements and initially declined to adopt a central buyer mechanism (D.19-02-022 issued March 4, 2019).

The second Track 2 Decision, D.20-06-002, adopted implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. The Decision rejected a settlement agreement between CalCCA and seven other parties that would have created a residual central buyer structure (and did not specify the identity of the central buyer) and a multi-year requirements for system and flexible RA. Under D.20-06-002, if an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. A competitive solicitation (RFO) process will be used by the CPEs to procure RA products. Costs incurred by the CPE will be allocated ex post based on load share, using the CAM mechanism. D.20-06-002 also established a Working Group (co-led by CalCCA) to address: (a) the development of an local capacity requirements reduction crediting mechanism, (b) existing local capacity resource contracts (including gas), and (c) incorporating qualitative and possible quantitative criteria into the RFO evaluation process to ensure that gas resources are not selected based only on modest cost differences.

In Track 3, D.19-06-026 adopted CAISO's recommended 2020-2022 Local Capacity Requirements and CAISO's 2020 Flexible Capacity Requirements and made no changes to the System capacity requirements. It established an IOU load data sharing requirement, whereby each non-IOU LSE (e.g., CCAs) will annually request data by January 15 and the IOU will be required to provide it by March 1. It also adopted a "Binding Load Forecast" process such that an LSE's initial load forecast (with CEC load migration and plausibility adjustments based on certain threshold amounts and revisions taken into account) becoming a binding obligation of that LSE, regardless of additional changes in an LSE's implementation to new customers.

On October 30, 2019, CalCCA filed a PFM of D.19-06-026, seeking the creation of an RA waiver process in 2020 for system and flexible RA obligations.

Details: The only two remaining items to be addressed in this proceeding are two applications for rehearing filed by Western Power Trading Forum (WPTF). First, on July 17, 2020, WPTF filed an Application for Rehearing of D.20-06-002, the Track 2 Decision creating a multi-year central procurement regime for local RA capacity. It requested rehearing and reconsideration of the rejected settlement agreement between WPTF, CalCCA, and other parties, arguing that D.20-06-002 will discourage the procurement of local resources by individual LSEs, discriminates against natural gas resources while increasing the need for CAISO backstop procurement, may undermine reliability by making it more difficult to integrate renewables with the larger western grid, and creates a "sale for resale" procurement construct that could place it under FERC's jurisdiction as a wholesale, rather than a retail, transaction.

Second, on August 5, 2020, WPTF filed an Application for Rehearing of D.20-06-028 with respect to the self-scheduling requirements for non-resource specific RA imports.

- **Analysis:** D.20-06-002 established a central procurement entity and mostly resolved the central buyer issues, although several details are being refined through a Working Group. Moving to a central procurement entity beginning for the 2023 RA compliance year will impact VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework. Eventually, it will eliminate the need for monthly local RA showings and associated penalties and/or waiver requests from individual

LSEs, but it also eliminates VCE's autonomy with regard to local RA procurement and places it in the hands of PG&E.

The Track 1 Decision on RA imports most directly impacted LSEs relying on RA imports to meet their RA obligations by increasing the difficulty of procuring such RA in the future.

- **Next Steps:** The only issues remaining to be addressed in this proceeding are WPTF's Applications for Rehearing. Remaining RA issues will be addressed in the successor RA rulemaking, R.19-11-009.
- **Additional Information:** [D.20-09-003](#) denying PFM's filed by PG&E, CalCCA, and Joint Parties (September 16, 2020); WPTF's [Application for Rehearing](#) of D.20-06-028 (August 5, 2020); WPTF's [Application for Rehearing](#) of D.20-06-002 (July 17, 2020); [D.20-06-028](#) on Track 1 RA Imports (approved June 25, 2020); [D.20-06-002](#) establishing a central procurement mechanisms for local RA (June 17, 2020); [D.20-03-016](#) granting limited rehearing of D.19-10-021 (March 12, 2020); [D.20-01-004](#) on qualifying capacity value of hybrid resources (January 17, 2020); [D.19-12-064](#) granting motion for stay of D.19-10-021 (December 23, 2019); [D.19-10-021](#) affirming RA import rules (October 17, 2019); [D.19-06-026](#) adopting local and flexible capacity requirements (July 5, 2019); Docket No. [R.17-09-020](#).

Investigation into PG&E's Organization, Culture and Governance (Safety OII)

No updates this month. On November 24, 2020, CPUC President sent a letter to PG&E indicating that she has directed CPUC staff to conduct fact-finding to determine whether to recommend that PG&E be placed into the enhanced oversight and enforcement process.

- **Background:** On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.

A July 2020 ALJ Ruling described the issues that are potentially still in scope for this proceeding, which include a broad array of issues identified in the December 21, 2018 Scoping Memo, as modified by D.20-05-053 approving PG&E's reorganization plan, plus the ongoing work of NorthStar, the consultant monitoring PG&E. However, the Ruling observed that "it is not clear as a practical matter how many of those issues can be or should be addressed at this time," given PG&E is now implementing its reorganization plan and has filed its application for regional restructuring. Party comments did not explicitly raise the issue of CCA proposals to purchase PG&E electric distribution assets.

The September 4 Ruling filed in the PG&E Safety Culture proceeding (I.15-08-019) and PG&E Bankruptcy proceeding (I.19-09-016) determined that I.15-08-019 will remain open as a vehicle to monitor the progress of PG&E in improving its safety culture, and to address any relevant issues that arise, with the consultant NorthStar continuing in its monitoring role of PG&E. The Ruling declined to close the proceeding but also declined to move forward with CCAs' consideration of whether PG&E's holding company structure should be revoked and whether PG&E should be a "wires-only company," as well as developing a plan for service if PG&E's CPCN is revoked in the future.

- **Details:** In her November 2020 letter to PG&E, President Batjer pointed to a "pattern of vegetation and asset management deficiencies that implicate PG&E's ability to provide safe, reliable service to customers," and stated the "Wildfire Safety Division Staff has identified a volume and rate of defects in PG&E's vegetation management that is notably higher than those observed for the other utilities."

- **Analysis:** CPUC President Batjer's letter indicates the CPUC is currently investigating whether to move PG&E into its newly created enhanced oversight and enforcement process. This six-step process could ultimately result in a revocation of PG&E's certificate of public convenience and necessity if it fails to take sufficient corrective actions.
- **Next Steps:** The proceeding remains open, but there is no procedural schedule at this time.
- **Additional Information:** [Letter](#) from President Batjer to PG&E (November 24, 2020); [Ruling](#) updating case status (September 4, 2020); [Ruling](#) on case status (July 15, 2020); [Ruling](#) on proposals to improve PG&E safety culture (June 18, 2019); [D.19-06-008](#) directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); [Scoping Memo](#) (December 21, 2018); Docket No. [I.15-08-019](#).

PG&E's 2019 ERRA Compliance

No updates this month. On November 16, 2020, Joint CCAs and PG&E filed reply briefs on remaining issues not addressed in the pending Settlement Agreement.

- **Background:** ERRA compliance review proceedings review the utility's compliance in the preceding year regarding energy resource contract administration, least-cost dispatch, fuel procurement, and the PABA balancing account (which determines the true up values for the PCIA each year). In its 2019 ERRA compliance application, PG&E requested that the CPUC find that its PABA entries for 2019 were accurate, it complied with its Bundled Procurement Plan in 2019 in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, RA sales, and least-cost dispatch of electric generation resources. PG&E also requests that the CPUC find that during the record period PG&E managed its utility-owned generation facilities reasonably. Finally, PG&E requests cost recovery of revenue requirements totaling about \$4.0 million for Diablo Canyon seismic study costs.

PG&E's supplemental testimony (1) described PG&E's PSPS Program and when it was used in 2019; (2) provided an accounting of the 2019 PSPS events, including a description of how balancing accounts forecast in PG&E's annual ERRA Forecast proceeding and reviewed in the 2019 ERRA Compliance Review proceeding may have been impacted and; (3) described the difference between load forecasting for ratemaking purposes and load forecasting for PSPS events.

The Joint CCAs' testimony identified \$175.4 million in net reductions to the 2019 PABA balance that should be made, excluding interest. The Joint CCAs argue this amount should be credited back to customers. PG&E's rebuttal testimony stated it will make all but \$33.6 million of those adjustments as part of its August 2020 accounting close.

On October 22, 2020, PG&E, Joint CCAs, and Cal Advocates filed a Joint Motion to Adopt Settlement Agreement. The Settlement Agreement resolves all but two of the disputed issues in Phase I of the proceeding. PG&E agreed with certain accounting errors identified by the Joint CCAs. PG&E also committed to provide additional, specific information requested by the Joint CCAs simultaneous with its ERRA Compliance applications and simplify the presentation of that information, resolving the Joint CCAs concern with transparency of the PG&E data supporting entries to the ERRA, PABA and related balancing accounts. PG&E and the Joint CCAs agreed to engage in discussions about the approach to Resource Adequacy solicitations governed by Appendix S of PG&E's 2014 Bundled Procurement Plan. Finally, PG&E agreed to rebill all commercial and industrial CCA customers assigned an incorrect vintage.

- **Details:** The two remaining issues not covered by the Settlement Agreement are (1) the request in PG&E's rebuttal testimony to reverse the \$92.9 million adjustment it made in response to D.20-02-047 to its PABA regarding the amount of RPS energy the utility retained to serve its bundled customers in 2019; and (2) the utility's decision not to re-vintage four RPS contracts renegotiated during 2019.

- **Analysis:** This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2019. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Efforts from the Joint CCAs to date will reduce the level of the PCIA for VGE's customers in 2021 and/or 2022.
- **Next Steps:** A proposed decision is anticipated to be issued soon. The schedule for Phase II of this proceeding has not been issued yet.
- **Additional Information:** [Joint Motion to Adopt Settlement Agreement](#) (October 22, 2020); [Ruling](#) modifying extending deadline for briefs and reply briefs (October 12, 2020); [Amended Scoping Memo and Ruling](#) (August 14, 2020); [Scoping Memo and Ruling](#) (June 19, 2020); PG&E's [Application](#) and [Testimony](#) (February 28, 2020); Docket No. [A.20-02-009](#).

Wildfire Cost Recovery Methodology Rulemaking

No updates this month. An August 7, 2019, PG&E Application for Rehearing remains pending regarding the CPUC's recent Decision establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay (D.19-06-027).

- **Background:** SB 901 requires the CPUC to determine, when considering cost recovery associated with 2017 California wildfires, that the utility's rates and charges are "just and reasonable." In addition, and notwithstanding this basic rule, the CPUC must "consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

D.19-06-027 found that the Stress Test cannot be applied to a utility that has filed for Chapter 11 bankruptcy protection (i.e., PG&E) because under those circumstances the CPUC cannot determine essential components of the utility's financial status. In that instance, a reorganization plan will inevitably address all pre-petition debts, include 2017 wildfire costs, as part of the bankruptcy process. The framework proposed for adoption in the PD is based on an April 2019 Staff Proposal, with some modifications. The framework requires a utility to pay the greatest amount of costs while maintaining an investment grade rating. It also requires utilities to propose ratepayer protection measures in Stress Test applications and establishes two options for doing so.

PG&E's application for rehearing challenges the CPUC's prohibition on applying the Stress Test to utilities like itself that have filed for Chapter 11 bankruptcy. PG&E's rationale is that SB 901 requires the CPUC to determine that the stress test methodology to be applied to all IOUs. Several parties filed responses to PG&E's application for rehearing disagreeing with PG&E.

- **Details:** N/A.
- **Analysis:** This proceeding established the methodology the CPUC will use to determine, in a separate proceeding, the specific costs that the IOUs (other than PG&E) may recover associated with 2017 or future wildfires.
- **Next Steps:** The only matter remaining to be resolved in this proceeding is PG&E's application for rehearing. This proceeding is otherwise closed.
- **Additional Information:** [PG&E Application for Rehearing](#) (August 7, 2019); [D.19-06-027](#) (July 8, 2019); [Assigned Commissioner's Ruling](#) releasing Staff Proposal (April 5, 2019); [Scoping Memo and Ruling](#) (March 29, 2019); [Order Instituting Rulemaking](#) (January 18, 2019); Docket No. [R.19-01-006](#). See also [SB 901](#), enacted September 21, 2018.

Glossary of Acronyms

AB	Assembly Bill
AET	Annual Electric True-up
ALJ	Administrative Law Judge
BioMAT	Bioenergy Market Adjusting Tariff
BTM	Behind the Meter
CAISO	California Independent System Operator
CAM	Cost Allocation Mechanism
CARB	California Air Resources Board
CEC	California Energy Commission
CPE	Central Procurement Entity
CPUC	California Public Utilities Commission
CPCN	Certificate of Public Convenience and Necessity
CTC	Competition Transition Charge
DA	Direct Access
DWR	California Department of Water Resources
ELCC	Effective Load Carrying Capacity
ERRA	Energy Resource and Recovery Account
EUS	Essential Usage Study
GRC	General Rate Case
IEPR	Integrated Energy Policy Report
IFOM	In Front of the Meter
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
ITC	Investment Tax Credit
LSE	Load-Serving Entity
MCC	Maximum Cumulative Capacity
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PABA	Portfolio Allocation Balancing Account
PD	Proposed Decision
PG&E	Pacific Gas & Electric
PFM	Petition for Modification
PCIA	Power Charge Indifference Adjustment
PSPS	Public Safety Power Shutoff
PUBA	PCIA Undercollection Balancing Account
PURPA	Public Utility Regulatory Policies Act of 1978 (federal)

QC	Qualifying Capacity
QF	Qualifying Facility under PURPA
RA	Resource Adequacy
RDW	Rate Design Window
ReMAT	Renewable Market Adjusting Tariff
RPS	Renewables Portfolio Standard
SCE	Southern California Edison
SED	Safety and Enforcement Division (CPUC)
SDG&E	San Diego Gas & Electric
TCJA	Tax Cuts and Jobs Act of 2017
TOU	Time of Use
TURN	The Utility Reform Network
UOG	Utility-Owned Generation
WMP	Wildfire Mitigation Plan
WSD	Wildfire Safety Division (CPUC)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

TO: Board of Directors
FROM: Rebecca Boyles, Director of Customer Care & Marketing
SUBJECT: Customer Enrollment Update (Information)
DATE: January 21, 2021

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of January 5, 2021.

Item 9 - Enrollment Update

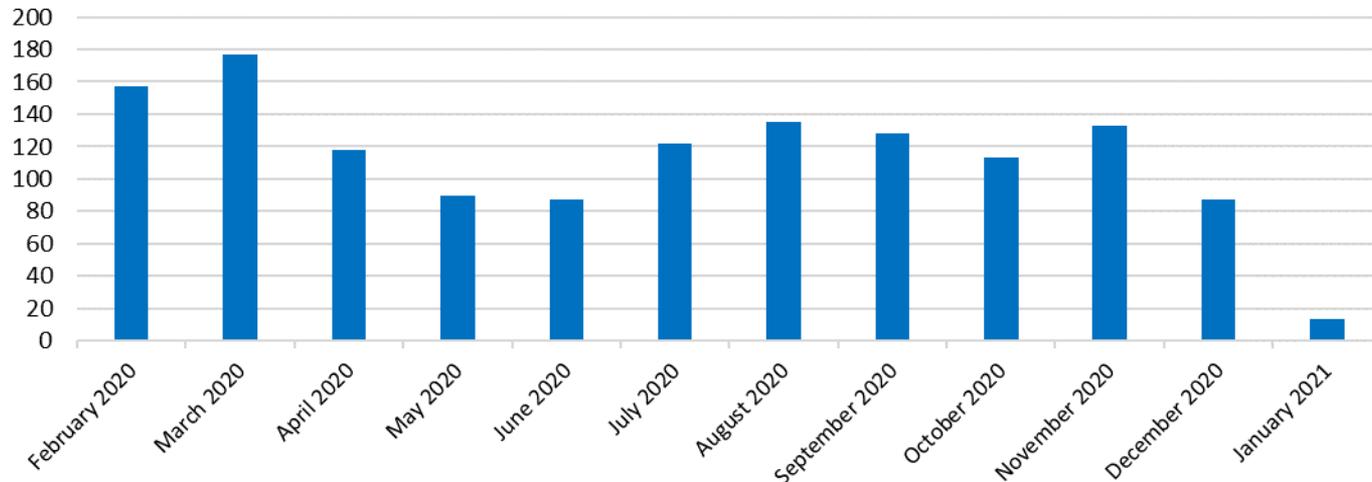
	Davis	Woodland	Winters	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	27,359	20,532	1	10,718	58,610	50,897	5,847	6	1,860	9,470	49,140
Eligible customers	28,652	23,408	1	12,216	64,277	55,666	6,386	6	2,115	10,222	54,055
Participation Rate	95%	88%	100%	88%	91%	91%	92%	100%	88%	93%	91%

There are currently 2,826 Winters customers not included in this table. Non-NEM customers will enroll through the remainder of January and NEM will enroll throughout 2021.

% of Load Opted Out

Residential	Commercial	Industrial	Ag	Total
9%	8%	0%	12%	9%

Monthly Opt Outs

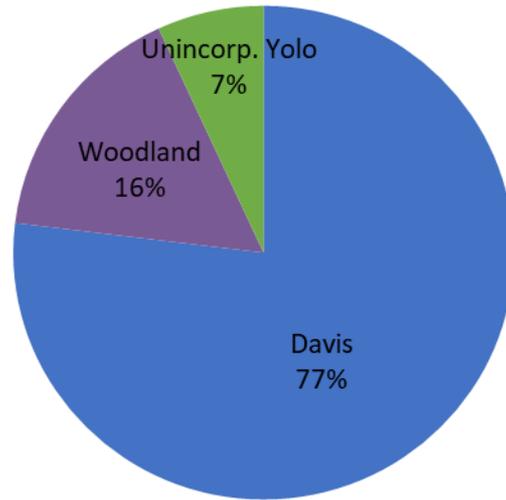


Status Date: 1/5/21

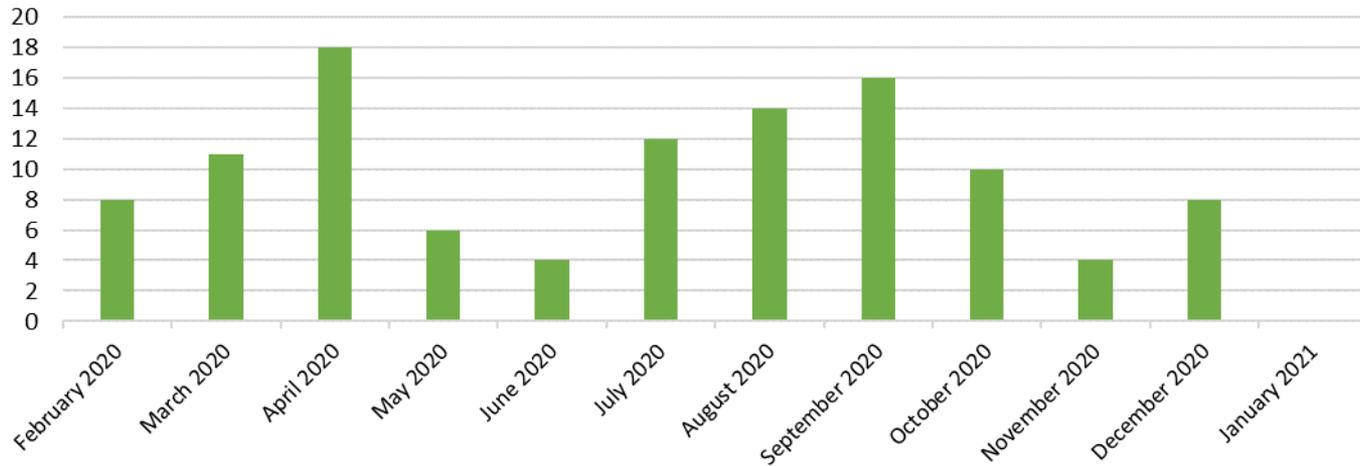


Item 9 - Enrollment Update

247 Opt Ups



Monthly Opt Ups



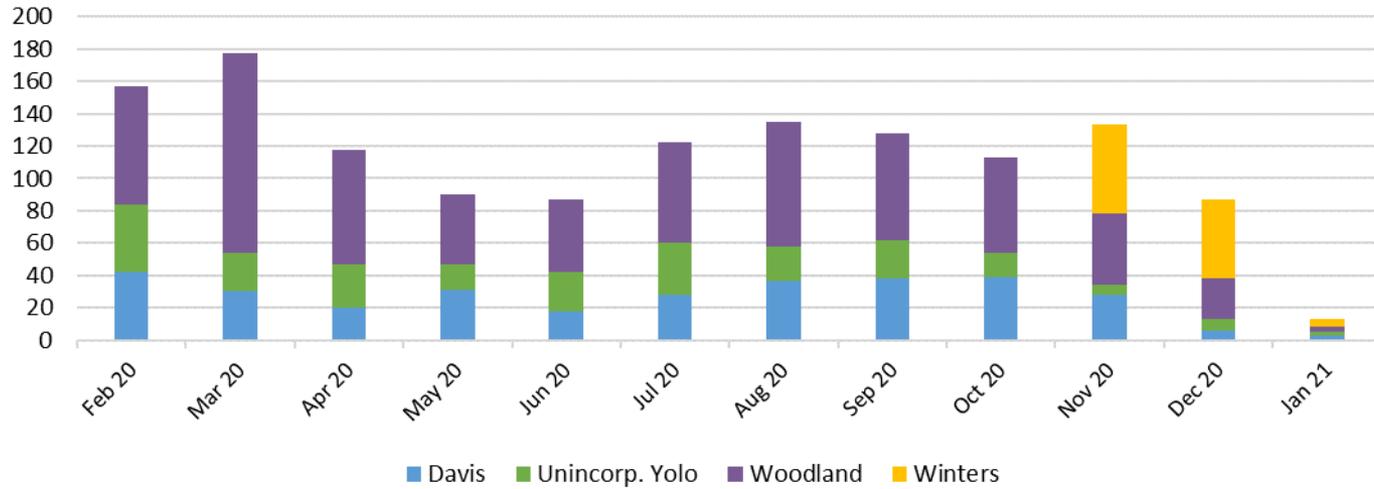
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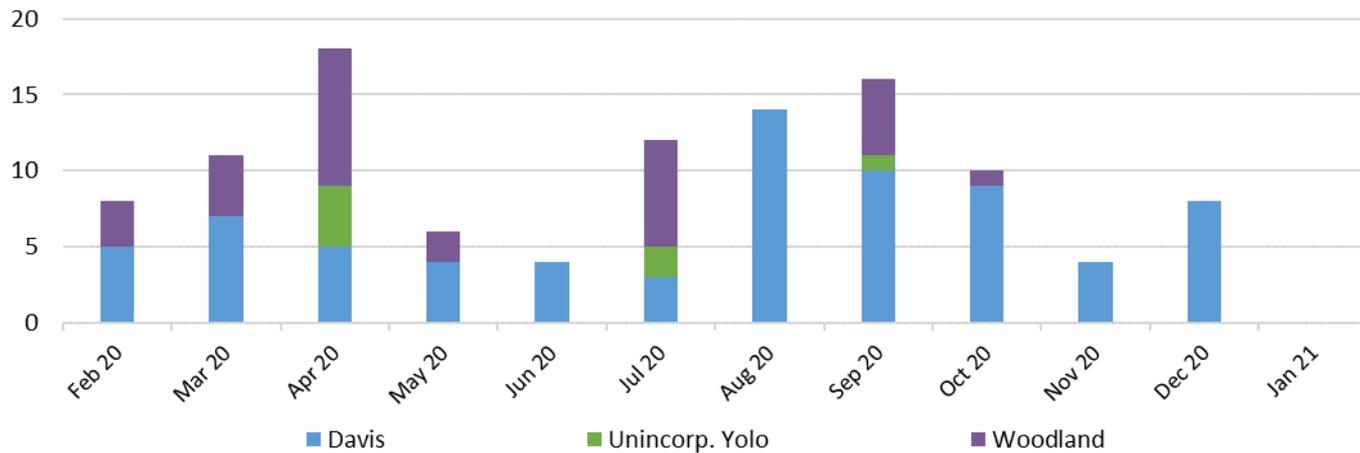
VALLEY
CLEAN ENERGY

Item 9 - Enrollment Update

Monthly Opt Outs

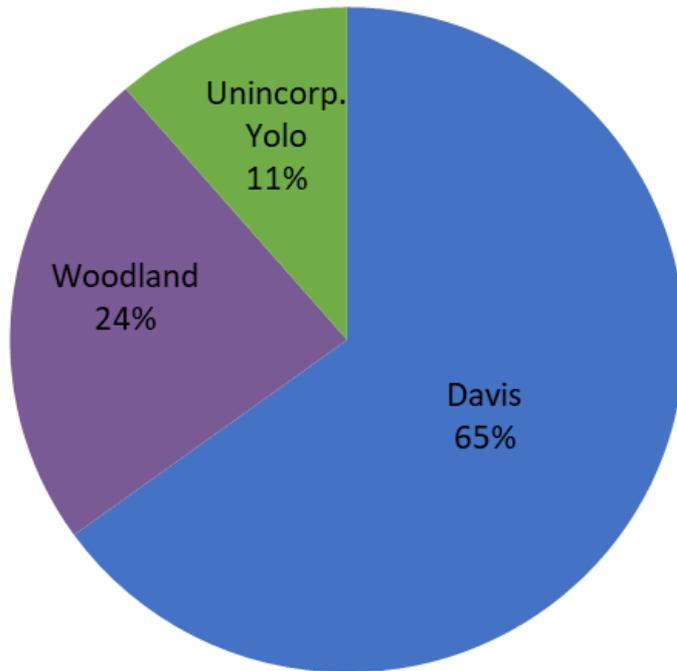


Monthly Opt Ups

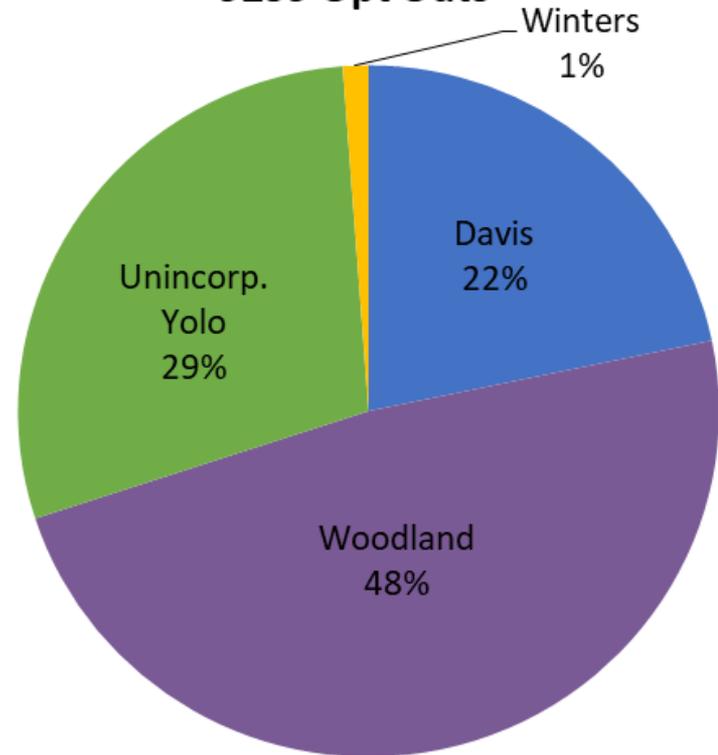


Item 9 - Enrollment Update

386 Opt Ups



9259 Opt Outs



VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee December 17, 2020 Meeting Summary

DATE: January 21, 2021

This report summarizes the Community Advisory Committee’s meeting held via Zoom on Thursday, December 17, 2020 at 5 p.m.

A. **Reviewed Revised Procurement Guide:** VCE Staff Gordon Samuel provided an overview of the product categories necessary for VCE to meet its compliance obligations and maintain a balanced power portfolio while meeting power supply portfolio targets set by the Board. Mr. Samuel reminded the CAC that the Board made the determination of VCE’s 2021 targets during budget discussions and this an informational item. Numerous items were discussed: risks of projects through power purchase agreements not meeting their targets; compliance strategy and the budget; financial flexibility and procurement impacts to VCE; impacts from the renewable and carbon free energy markets; timing and meeting compliance requirements; and, impacts to VCE’s power content label.

B. **GHG-free Attributes large hydro and /or nuclear (2021 and beyond):** Mr. Samuel reintroduced this item to the CAC reminding them that the Board made a decision in May 2020 to accept PG&E’s GHG-free large hydro attributes for the 2020 year only. Mr. Samuel sought the CAC’s recommendation to the Board on GHG-free allocations from PG&E for 2021 and beyond. The CAC and Staff discussed: VCE’s financial situation and uncertainties of the market value of GHG-free attributes; value of attributes within the power content label; uncertainty if VCE is receiving REQs or energy as the result of taking the large hydro GHG-free attributes; whether or not there is the same regulatory objection limitation that the previous offer included; customer opinion on nuclear; and challenges due to RA (resource adequacy) market and PCIA (power charge indifference adjustment) uncertainty.

The CAC voted to recommend to the Board that: 1) VCE continues to take PG&E’s large hydro GHG-free attributes only, no nuclear, for 2021 only (7-1-1) and 2) this question on whether VCE should take PG&E’s GHG-free attributes (hydro and/or nuclear) beyond 2021 be brought back to the CAC and Board for consideration and discussion with additional information that may include pricing, customer views on nuclear, and market viability. (9-0-0)

C. **Reviewed and approved draft updated CAC Charge:** After a brief discussion, the CAC voted to recommend that the Board consider adopting the redrafted and updated CAC Charge, which incorporates VCE’s 3-year Strategic Plan, Environmental Justice Statement, and input on policy level issues from the CAC, at their January 2021 Board meeting. (9-0-0)

D. **Reviewed and discussed formation of Task Groups for 2021:** The CAC had a preliminary discussion, including input from Staff, on what CAC task groups are needed in 2021 to assist the Board and Staff. This item will be discussed again at the CAC’s January 2021 meeting.

E. **Election of 2021 Chair and Vice Chair:** The CAC voted unanimously to elect Christine Shewmaker (City of Woodland) as Chair and Cynthia Rodriguez (Yolo County) as Vice Chair for the 2021 calendar year.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Approve Updated Community Advisory Committee Charge

DATE: January 21, 2021

RECOMMENDATION

Approve revised and updated Community Advisory Committee Charge incorporating VCE’s 3-year Strategic Plan, Environmental Justice statement and input on policy level issues from the CAC.

BACKGROUND AND ANALYSIS

In November 2018, the Board adopted an updated CAC Charge to reflect the transition from pre-launch to post-launch activities. In November 2020, the Board adopted VCE’s 3-year Strategic Plan and an Environmental Justice statement. At the CAC’s December 17, 2020 meeting, the Committee discussed and finalized a recommended update to the CAC Charge to include goals and objectives outlined in the 3-year Strategic Plan, reflect the Environmental Justice statement, and its role in providing input on policy level issues. The CAC recommended that the Board approve the attached updated Charge. (9-0-0)

Staff supports the CAC’s recommendation and recommends that the updated Charge be approved. The current November 2018 Charge redlined to show the updates and a clean copy of the updated Charge are attached.

ATTACHMENTS

1. Draft updated Charge (November 2018) – redlined
2. Draft Updated Charge without redlines

Valley Clean Energy Alliance
Community Advisory Committee

Updated Charge (date)

Consistent with the policy adopted by the Valley Clean Energy Alliance (VCEA) Board of Directors, the VCEA Community Advisory Committee (CAC) adopts ~~the this~~ Charge to guide its activities.

- Advise the VCEA Board of Directors and VCEA staff on VCEA’s general policy and operational objectives, including, but not limited to:

 - -portfolio mix and objectives,
 - technical, market, program and policy areas, policy related financial considerations and rate options, and
 - strategic objectives and strategies-plans designed to reduce carbon emissions, accelerate development of local resources and promote increase energy resilience in member jurisdictions.

- Review implementation and provide input on action options related to VCE’s Strategic Plan and Environmental Justice statement adopted in 2020.
- ~~Assist in the development of public information materials related to customer energy investments and choices offered by VCEA, PG&E and third parties.~~
- Collaborate with~~Assist and advise~~ VCEA staff and consultants on:
 - ~~community outreach, marketing and programs for its ~~to and liaison with~~ member communities,~~
 - monitoring legislative and regulatory activities related to Community Choice Energy issues, and
 - the development of public information materials related to customer energy investments and choices.

~~Collaborate with VCEA staff on monitoring legislative and regulatory activities related to Community Choice Energy issues.~~

~~In order to To achieve the goals and mission of VCEA, the CAC will: develop, periodically review and update a workplan for the short and longer terms. ~~The Committee will~~~~

- monitor organizational performance toward fulfillment of the VCEA Board of Director’s Vision Statement and may recommend policy changes to further the VCEA vision. ~~The CAC will also engage with VCEA, Staff~~

- advise and assist the Board, staff and consultants through its task groups or other means consistent with California's open meeting laws,~~and~~
- evaluate, advise and assist VCEA by~~and~~ make-making recommendations on select items at the request of the Board or the Interim General Manager's ~~request~~ or in consultation with the Interim General Manager~~→,~~ and
- ~~The Community Advisory Committee will~~
- periodically review this charge and make recommendations for changes to the Board of Directors in order to reflect~~as~~ new issues, opportunities and challenges impacting the VCEA arise.

~~Adopted: November 15, 2018~~ Revised and adopted: xxxx[insert date]

Valley Clean Energy Alliance

Community Advisory Committee

Updated Charge (January 21, 2021)

Consistent with the policy adopted by the Valley Clean Energy Alliance (VCEA) Board of Directors, the VCEA Community Advisory Committee (CAC) adopts this Charge to guide its activities.

- Advise the VCEA Board of Directors and VCEA staff on VCEA’s general policy and operational objectives, including, but not limited to:
 - portfolio mix and objectives,
 - policy related financial considerations and rate options, and
 - strategic objectives and plans designed to reduce carbon emissions, accelerate development of local resources and increase energy resilience in member jurisdictions.
- Review implementation and provide input on action options related to VCE’s Strategic Plan and Environmental Justice statement adopted in 2020.
- Assist and advise VCEA staff and consultants on:
 - community outreach, marketing and programs for its member communities,
 - monitoring legislative and regulatory activities related to Community Choice Energy issues, and
 - the development of public information materials related to customer energy investments and choices.

To achieve the goals and mission of VCEA, the CAC will:

- monitor organizational performance toward fulfillment of the VCEA Board of Director’s Vision Statement and may recommend policy changes to further the VCEA vision,
- advise and assist the Board, staff and consultants through its task groups or other means consistent with California’s open meeting laws,
- evaluate, advise and assist VCEA by making recommendations on select items at the request of the Board or the Interim General Manager or in consultation with the Interim General Manager, and
- periodically review this charge and make recommendations for changes to the Board of Directors as new issues, opportunities and challenges impacting the VCEA arise.

Revised and adopted: January 21, 2021

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Receipt of signed Amendment 1 to Jim Parks Agreement for Consultant Services adding key account tasks and extending the contact one year

Date: January 21, 2021

RECOMMENDATION

Receive copy of signed Amendment 1 to Jim Parks Agreement for Consultant Services adding key account tasks and extending the contract one year.

BACKGROUND

On June 29, 2020, VCE entered into an agreement for consultant services with James Parks to provide transitional director duties, including SACOG grant and other program activities, with the new Director of Customer Care and Marketing Rebecca Boyles. The agreement is for a not to exceed amount of \$10,000 and was set to expire on December 31, 2020.

Mr. Parks has provided valuable transitional assistance to Staff as he has history with VCE's vision, mission and goals and knows VCE's customers. VCE Staff needs assistance with key account services for designated commercial, industrial and agricultural customer outreach.

Through November 2020, a total of \$3,450 has been expended leaving \$6,550 remaining. The monies are budgeted in the Fiscal Year 2021/2022 operating budget.

Amendment 1 to the consultant agreement expands the tasks to include key account services (Exhibit A – Scope of Services) and extends the contract through December 31, 2021 (Exhibit C – Schedule of Services). All other provisions of the contract remain unchanged, including the not to exceed amount.

Attachments

1. Amendment 1 to the Jim Parks Agreement for Consultant Services
2. Exhibit A – Scope of Services
3. Exhibit C – Schedule of Services

AMENDMENT NO. ONE (1)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
JIM PARKS

1. Parties and Date.

This Amendment No. One (1) to the Consultant Services Agreement dated June, 29, 2020, is made and entered into by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California with its principal place of business at 604 2nd Street, Davis, California 95616 (“VCE”) and Jim Parks, with its principal place of business at 4478 G Street, Sacramento, California 95819. VCE and Jim Parks are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 **Jim Parks.** VCE and Jim Parks have entered into an agreement entitled “Agreement for Consultant Services” dated June 29, 2020 (“Agreement”) for the purpose of retaining Jim Parks to provide the services described in the Agreement.

2.2 **Amendment Purpose.** VCE and Jim Parks desire to amend the Agreement to extend the Agreement for an additional one (1) year and to revise the scope of services.

2.3 **Amendment Authority.** This Amendment No. One (1) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

3.1 **Amendment.** Section 1.4 of the Agreement is hereby amended in its entirety to read as follows:

1.4 **Term** The term of this Agreement, as amended, shall begin on January 1, 2021 and shall end on December 31, 2021, unless amended as provided in the Agreement, or when terminated as provided in Article 5.

3.2 Amendment. Exhibits A (Scope of Services) and C (Schedule of Services), of the Agreement are hereby replaced in its entirety by Exhibits A and C attached hereto, which are incorporated herein.

3.3 Continuing Effect of Agreement. Except as amended by this Amendment No. One (1), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. One (1). From and after the date of this Amendment No. One (1), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. One (1).

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. One (1).

3.5 Severability. If any portion of this Amendment No. One (1) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. ONE (1) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND JIM PARKS**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. ONE (1) as of
the 28th day of December 2020.

VALLEY CLEAN ENERGY ALLIANCE

JIM PARKS

By: 

Mitch Sears
Interim General Manager

By: 

Its: Sole Proprietor

Printed Name: James Parks

APPROVED AS TO FORM:

By: 

Harriet Steiner
VCE Attorney

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide the following services to VCE:

1. Transition Director Duties – Consultant shall work with the new Director of Customer Care and Marketing to transition existing responsibilities to the new director. This will include providing enough documentation and details to enable the new director to understand existing and pending projects, relationships, outreach and marketing initiatives, rate changes and other related projects, initiatives and efforts, past and present.
2. Coordination with VCE Staff – Consultant shall work with other VCE staff to ensure a smooth transition of other responsibilities including the SACOG grant and other program activities.
3. Provide professional key accounts services for designated commercial, industrial, and agricultural customer outreach. Services in this area will report up through the Director of Customer Care and Marketing. Responsibilities including the following tasks:
 - A. Meet with customer and key stakeholder leadership to support strategic, long-term planning and goals of the customer and VCE;
 - B. Develop relationships with the customer and any relevant community organizations to help understand and address any challenges;
 - C. Discuss operations and utility rate structure to identify changes that can save money and energy;
 - D. Development of customer segmentations strategies to better serve business needs consistent to that customer segment; and,
 - E. When advanced energy services are available, introduce and facilitate the implementation of customer programs, services, and education programs to customers.
4. Other Services as Needed – Consultant will assist on other assignments as directed by the Interim General Manager.

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract will expire on December 31, 2021. The Agreement and the schedule may be extended by mutual agreement in writing by both parties.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 13

TO: Board of Directors
FROM: Chad Rinde, VCE Treasurer
SUBJECT: Treasury Function and Investment Report
DATE: January 21, 2021

Recommendation

Accept Treasury & Investment report from the Valley Clean Energy Treasurer and ratify the County of Yolo Investment Policy for the calendar year 2021 as the Investment policy applicable to VCE.

Background

The Joint Powers Agreement between the County of Yolo, City of Davis, City of Woodland and City of Winters specifies that the County of Yolo Chief Financial Officer will be the Treasurer and Auditor of the Valley Clean Energy (VCE).

The Board has the discretion should it desire in the future to appoint someone else to perform these functions; however at the formation of the Joint Powers Agency, it was determined that this arrangement provided additional oversight and a check and balance that was important as the agency matured. It also provided access to the experience of the County in serving special districts as the County Chief Financial Officer is the Treasurer and the Auditor for various other special districts such as rural Fire Districts, YCPARMIA, and others as required by law or voluntarily in JPA agreements.

The role of the Treasurer is three-fold and focuses on three areas:

- Banking and Cash Management – Day to day transactions are ordinarily approved according to the delegation of authority provided to executive staff of VCE. However, the Treasurer retains the authority to select the banking institutions to be used and collaborate with staff in order to perform cash flow management to ensure that investing or financing occurs as needed.
- Investing – The Treasurer is responsible to invest funds in accordance with law and according to the agency's investment policy.
- Financing – The Treasurer participates as a key team member in financing decisions in accordance with policies on borrowing, debt and obligations. This is a policy that VCE will need to develop should it look to perform financings in the future to comply with SB1029 (requires public agencies seeking financing to have a debt policy) which became effective in 2018.

Analysis

As part of Board questions on the VCE investment approach, the Treasurer collaborated with the Director of Finance and Internal Operations to update cash flow forecasts to determine the capacity to invest VCE Funds. This included looking to the investment policy which requires that funds invested first be safe, then liquid to meet agency needs, and third to seek yields on investment (Att. A – County of Yolo Investment Policy).

In determining the ability to invest, the Treasurer reviewed existing agreements within River City Bank Revolving Line of Credit (RLOC) Agreement which state:

Section 10.4 Exclusive Deposit Relationship. Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by an additional 2.00 percentage margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 10.11. Investments, Acquisitions, Loans Advances and Guarantees. Borrower shall not directly or indirectly, make, retain or have any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to any other Person, or acquire any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligations or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other person.

Effectively in short, these restrictions limit the deposits to be placed with River City bank and investment options are presently limited to those offerings of River City Bank. River City Bank does however offer a money market account that allows for earning of interest on deposits. Valley Clean Energy has opened a Money Market Account with RCB that provides same day liquidity and generally pegs its interest rate to that of the Local Agency Investment Fund (LAIF) at the state level, (paid 0.20% annual interest rate for month as of December 10, 2020 (Attachment B)), though the rate can be adjusted at the option of RCB at any time to reflect changing market conditions. This option is presently appropriate for VCE at this time considering the agency is still growing its cash position and has limited funds to invest.

Conclusion

Based on the report above, VCE staff plan to continue to utilize the River City MMA account where excess funds exist to invest funds as options to invest are extremely limited while VCE maintains the Revolving Line of Credit Agreement. The VCE Treasurer will continue to work closely with the Director of Finance and Internal Operations to determine additional investment options in the future.

Staff request that the VCE Board ratify the County of Yolo Investment Policy for 2021 as the applicable investment policy for VCE.

Attachment

Attachment A – County of Yolo Investment Policy 2021

Attachment B – River City Materials on Public Money Market Account

County of Yolo Administrative Policies and Procedures Manual

TITLE: Investment Policy

Department: Financial Services

TYPE: POLICY

DATE: December 15, 2020

A. PURPOSE

This document is known as the annual investment policy and represents the policies of the Board of Supervisors of the County of Yolo related to the investment of funds under the control of the Chief Financial Officer. The office of the Auditor-Controller and the Treasurer-Tax Collector have been consolidated. All statutory duties, responsibilities, and budgets of the Auditor-Controller and Treasurer-Tax Collector are consolidated into the office known as the Chief Financial Officer as per Yolo County code section 2-5.113 effective January 5, 2015.

The Department of Financial Services was established to consolidate and perform all functions of the offices of the Auditor, Controller, Tax Collector, and Treasurer, and any other county-wide fiscal functions directed by the board as per county code sec. 2-5.2001.

This policy is prepared annually by the Chief Financial Officer in accordance with the California Government Code and prudent asset management principles. Pursuant to Government Code sections 27133 and 53646 this policy has been reviewed by the Financial Oversight Committee and approved by the Board of Supervisors at a public meeting.

B. APPLICABILITY

This policy will cover the period of January 1, 2021 through December 31, 2021.

This policy applies to the cash management and investment activities performed by County personnel and officials for any local agency, public agency, public entity or public official that has funds on deposit in the county treasury pool. The terms "County" and "county treasury pool" are used interchangeably and include all such funds so invested.

The investment of bond proceeds will be governed by the provisions of relevant bond and related legal documents.

The investment of endowment funds will be governed by the underlying laws, regulations and specific governmental approvals under those laws pursuant to which the endowments were created. Endowment fund investments will primarily focus on the preservation of principal and use of investment income for operational purpose.

The investment of the Section 115 Trusts related to OPEB and Pension will be invested in compliance with the County Policies on "Accounting, Funding and Recovery of OPEB Costs" and the "Pension Funding Policy" and legal documents associated with the Section 115 Trusts.

County of Yolo Administrative Policies and Procedures Manual

C. STANDARD OF CARE

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the "prudent investor" standard which states that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.

This standard shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

D. PUBLIC TRUST

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the County's ability to govern effectively

E. OBJECTIVES

The primary objectives, in descending priority order, of the investment activities of the County shall be:

1. **Safety**. Safety of principal is the foremost objective of the investment program. Investments of the County shall be undertaken in a manner that seeks to ensure preservation of capital in the portfolio.
2. **Liquidity**. The investment portfolio shall be maintained in such a manner as to provide sufficient liquidity to meet the operating requirements of any of the participants.
3. **Return on Investment**. The investment portfolio of the County shall be designed with the objective of attaining a market rate of return on its investments consistent with the constraints imposed by its safety objective and liquidity considerations.

F. DELEGATION OF AUTHORITY

Subject to Section 53607 the authority of the Board of Supervisors to invest or to reinvest funds of the pooled investments, or to sell or exchange securities so purchased, may be delegated for a one-year period by ordinance in accordance with Government Code Sections 27000.1 and 27000.3.

The Board of Supervisors has designated the Chief Financial Officer as its agent authorized to make investment decisions in consultation with the Finance and Investment Committee of the Board after considering the strategy proposed by the investment advisor.

County of Yolo Administrative Policies and Procedures Manual

G. ETHICS AND CONFLICT OF INTEREST

Individuals performing the investment function and members of the Financial Oversight Committee (FOC) shall maintain the highest standards of conduct.

County Officers and employees involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. These individuals should follow the Code of Ethics for Procurement approved by the Board of Supervisors and comply with all relevant provisions of the Political Reform Act, especially the requirements of Chapter 7 – Conflict of Interest and Chapter 9.5 – Ethics. The key requirements are listed below:

1. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could affect their ability to make impartial decisions.
2. Officers and employees shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County.
3. Officers and employees shall not accept gifts or gratuities with a value exceeding \$500 in any one year from any bank, broker, dealer, or any other person, firm, or organization who conducts business with the Department of Financial Services.
4. No person with investment decision-making authority in the County Administrator's office or the Department of Financial Services may serve on the board of directors or any committee appointed by the board or the credit committee or supervisory committee of a state or federal credit union which is a depository for County funds.

The Financial Oversight Committee Charter includes the following requirements for members of the committee:

1. A member shall disclose to the committee at a regular meeting any activities that directly or indirectly raised money for a member of the governing board of any local agency that has deposited funds in the County Treasury while a member of the committee. For purposes of this subsection, raising money includes soliciting, receiving, or controlling campaign funds of a candidate, but not the member's individual campaign contributions or non-financial support. This section does not apply to a member raising money for his or her own campaign.
2. A member shall disclose to the Committee at a regular meeting any contributions, in the previous three years or during the period that the employee is a member of the committee, by an employer to the campaign of a candidate to be a member of a legislative body of any local agency that has deposited funds in the County Treasury.
3. A member cannot secure employment with, or be employed by, bond underwriters, bond counsel, security brokerages or dealers, financial services firms, financial institutions, and municipal advisors with whom the County is doing business during the member's Financial Oversight Committee membership period or for one year after leaving the Financial Oversight Committee. This subsection only applies to employment or soliciting employment, and not other relationships with such companies with whom the County is doing business.

County of Yolo Administrative Policies and Procedures Manual

4. A member shall disclose to the Committee any honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other persons who conduct business with the Department of Financial Services while a member of the Committee. All members shall also comply with the requirements of the Political Reform Act or any other law or regulation regarding to receipt and disclosure of financial benefits and conflicts.

H. INTERNAL CONTROLS

Internal control procedures shall be established and maintained by the Department of Financial Services that provide reasonable assurance that the investment objectives are met and to ensure that the assets are protected from loss, theft, misuse, or mismanagement. The internal controls shall be reviewed as part of the regular annual independent audit. The controls and procedures shall be designed to prevent employee error, misrepresentations by third parties, and imprudent or illegal actions by employees or officers of the County.

I. CASH MANAGEMENT

In determining the amount that can be invested County personnel shall take into account the liquidity needs of the County and the agencies in the Treasury pool, and shall take reasonable steps to ensure that cash flow requirements of the County and pool participants are met for the next six months, barring unforeseen actions from the State Controller or other funding sources, such as deferral of cash payments.

County personnel shall maintain separate accounting for cash funds and monitor aggregate cash balances of the County and each agency in the Treasury pool, and shall notify the County Administrator or agency management of unhealthy trends in aggregate cash balances. Unhealthy trends may include but are not limited to deferral of cash payments from State, Federal grantors, or other funding sources, significant declines in available aggregate cash balances, or near-deficit aggregate balances. Agencies that are so notified are expected to take immediate action to cure any deficit and improve cash balances. Continuing deficits shall be reported to the Board of Supervisors for further action.

The Chief Financial Officer shall provide quarterly reports on total cash flows and balances of the Treasury Pool to the Financial Oversight Committee.

J. AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS

The County may secure the services of an Investment Advisor. Precautionary contractual language with such an adviser shall include: delivery versus payment methods, third-party custody arrangements, prohibitions against self-dealings, independent audits, and other appropriate internal control measures as deemed necessary by the Chief Financial Officer.

The County or the County's Investment Advisor shall maintain a list of authorized broker/dealers and financial institutions which are approved for investment transaction purposes, and it shall be the policy of the County to purchase securities only from those authorized institutions or firms. Authorized brokers/dealers must either (i) be classified as Reporting Dealers affiliated with the New York Federal Reserve Bank as Primary Dealers or (ii) be registered to conduct business in the State of California and be licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code.

No broker/dealer shall be selected which has within any consecutive 48-month period made a political contribution to any member of the Board of Supervisors or to any candidate for these offices in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board.

County of Yolo Administrative Policies and Procedures Manual

K. PERMITTED INVESTMENT INSTRUMENTS

1. United States Treasury Obligations. Government obligations for which the full faith and credit of the United States are pledged for the payment of principal and interest.
2. Federal Agency Obligations. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
3. California Municipal Obligations. Obligations of the State of California, this local agency or any local agency within the state, including bonds payable solely out of revenues from a revenue-producing property owned, controlled or operated by the state, this local agency or any local agency or by a department, board, agency or authority of the state or any local agency that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Any investment in obligations of this local agency shall be in a ratio proportionate to the County's share of the pooled investments.
4. Other 49 State Municipal Securities. Registered treasury notes or bonds issued by any of the other 49 states, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any state that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a NRSRO.
5. Repurchase Agreements. Agreements to be used solely as short-term investments not to exceed 90 days.

The County may enter into Repurchase Agreements with primary dealers in U.S. Government securities who are eligible to transact business with, and who report to, the Federal Reserve Bank of New York.

The following collateral restrictions will be observed: Only U.S. Treasury securities or Federal Agency securities, as described above in (K)(1) and (K)(2), will be acceptable collateral.

All securities underlying Repurchase Agreements must be delivered to the County's custodian bank versus payment or be handled under a properly executed tri-party repurchase agreement. The total market value of all collateral for each Repurchase Agreement must equal or exceed, 102 percent of the total dollar value of the money invested by the County for the term of the investment. For any Repurchase Agreement with a term of more than one day, the value of the underlying securities must be reviewed at least weekly.

Market value must be calculated each time there is a substitution of collateral.

The County or its trustee shall have a perfected first security interest under the Uniform Commercial Code in all securities subject to Repurchase Agreement.

The County will have properly executed a PSA agreement with each counter party with which it enters into Repurchase Agreements.

6. Banker's Acceptances. Issued by domestic or foreign banks, the short-term paper of which is rated in the highest category by a nationally recognized statistical rating organization (NRSRO).

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Purchases of Banker's Acceptances may not exceed 180 days maturity or 40 percent of the County's investment portfolio.

7. Commercial Paper. Of prime quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions shown in either paragraph (A) or paragraph (B):
 - a. The entity meets the following criteria:
 - i. Is organized and operating in the United States as a general corporation.
 - ii. Has total assets in excess of five hundred million dollars (\$500,000,000).
 - iii. Has debt other than commercial paper, if any, that is rated in a rating category of "A", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).
 - b. The entity meets the following criteria:
 - i. Is organized within the United States as a special purpose corporation, trust, or limited liability company.
 - ii. Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.
 - iii. Has commercial paper that is rated in a rating category "A-1", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).

Purchases of eligible commercial paper may not exceed 270 days maturity. No more than 40 percent of the County's investment portfolio may be invested in eligible commercial paper.

8. Medium-Term Corporate Notes. Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term corporate notes shall be rated in a rating category "A", the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Purchase of medium-term corporate notes may not exceed 30 percent of the County's investment portfolio.
9. Non-Negotiable Certificates of Deposit. FDIC insured or fully collateralized time certificates of deposit in financial institutions located in California, including U.S. branches of foreign banks licensed to do business in California. All time deposits must be collateralized in accordance with California Government Code Section 53651, either at 150% by promissory notes secured by first mortgages and first trust deeds upon improved residential property in California eligible under section (m) or at 110% by eligible marketable securities listed in subsections (a) through (l) and (n) and (o). The County, at its discretion and by majority vote of the Board of Supervisors, on a quarterly basis, may waive the collateralization requirements for any portion of the deposit that is covered by federal insurance. Alternatively, the County may invest in deposits, including certificates of deposit, at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit as provided for in Government Code section 53635.8.

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10. Negotiable Certificates of Deposit. Negotiable certificates of deposit issued by a nationally or state-chartered bank or a state or federal savings and loan association or by a federally-licensed or a state-licensed branch of a foreign bank that is rated in a rating category of "A" long-term or "A-1 short-term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Purchases of all negotiable certificates of deposit may not exceed 30 percent of the County's investment portfolio.
11. Local Government Investment Pools. (Either state-administered or through joint powers statutes and other intergovernmental agreement legislation.) Investments may be maximized to the level allowed by the State and should be reviewed periodically. Investment objectives, limitations, and controls of each pool must be consistent with this policy.
12. Money Market Funds. Shares of beneficial interest issued by diversified management companies that are money market mutual funds registered with Securities and Exchange Commission under the Investment Company Act of 1940. To be eligible for investment pursuant to this subdivision these companies shall either: (1) attain the highest ranking letter or numerical rating provided by not less than two of the largest nationally recognized statistical rating organizations or (2) have retained an investment advisor registered or exempt from registration with the Securities and Exchange Commission with not less than five years experience investing in securities and obligations authorized by Government Code Section 53601 and with assets under management in excess of \$500,000,000. Money Market Funds shall not exceed 20 percent of the investment portfolio of the County as recorded at purchase price on date of purchase.
13. Asset-Backed Securities. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-back certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond. Eligible securities must be rated, by a nationally recognized statistical rating organization, as "AAA", and have a maximum remaining maturity of five years or less . No more than 20 percent of the County's investment portfolio may be invested in this type of security.
14. Reverse Repurchase Agreements. Reverse repurchase agreements shall be used primarily as a cash flow management tool and subject to all the following conditions
 - a. The security to be sold using a reverse repurchase agreement has been owned and fully paid for by the County for a minimum of 30 days prior to sale.
 - b. The total of all reverse repurchase agreements on investments owned by the County does not exceed 20 percent of the base value of the portfolio. The base value of the County's portfolio for this section is defined as that dollar amount obtained by totaling all cash balances placed in the portfolio by all participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.
 - c. The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.
 - d. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty using a reverse repurchase agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement, unless the reverse repurchase agreement includes a written

County of Yolo Administrative Policies and Procedures Manual

codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

- e. Investments in reverse repurchase agreements or similar investments in which the County sells securities prior to purchase with a simultaneous agreement to repurchase the security shall be made only with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency. A significant banking relationship is defined by any of the following activities of a bank:
 - i. Involvement in the creation, sale, purchase, or retirement of the County's bonds, warrants, notes, or other evidence of indebtedness.
 - ii. Financing of the County's activities.
 - iii. Acceptance of the County's securities or funds as deposits.

15. Supranationals. United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), or Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of "AA", the equivalent or higher by a NRSRO. Purchases of these securities shall not exceed 30 percent of the County's portfolio.

The Chief Financial Officer may make permitted investments (as described above) pursuant to the California Government Code (including Section 53601 et. seq.) or deposit funds for safekeeping in state or national banks, savings association, credit unions, or federal insured industrial loan companies (as described in Section 53635.2).

Credit criteria listed in this section refers to the credit of the issuing organization at the time the security is purchased. Should a security owned by the County be downgraded below "A" the Investment Advisor shall immediately notify the Chief Financial Officer who will report to the Board of Supervisors, at their next regularly scheduled meeting, the circumstances of the downgrade and any action taken or recommended.

L. INELIGIBLE INVESTMENTS

The County shall not invest any funds in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages, or in any security that could result in zero interest accrual if held to maturity.

Effective January 1, 2021, the County may invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. The County may hold these instruments until their maturity dates. Securities described in this paragraph shall remain in effect only until January 1, 2026, and as of that date is repealed.

Any other security not specifically permitted by Section K is prohibited.

M. MAXIMUM MATURITY

Investment maturities shall be based on a review of cash flow forecasts. Maturities will be scheduled so as to permit the County to meet all projected obligations.

County of Yolo Administrative Policies and Procedures Manual

Unless otherwise specified in this policy or authorized by the Board of Supervisors, no investment shall be made in any security, other than a security underlying a repurchase agreement as authorized by this policy that at the time of the investment has a term remaining to maturity in excess of five years.

The Board of Supervisors has specifically approved investment maturities beyond five years for certain three long-term portfolios: Yolo County Landfill Closure Trust Fund, the Yolo County Cache Creek Maintenance and Remediation Fund, and the Demeter Endowment (funds deallocated from the Ceres Tobacco Endowment Fund).

N. DIVERSIFICATION & PERCENTAGE LIMITATIONS

The County shall limit the County's investments in any one issuer to no more than 5 percent of the County's total investments at the time of purchase, except for U.S. Treasuries, Federal Agencies, Supranationals, repurchase and reverse repurchase agreements, and pooled investments such as local government investment pools, LAIF, and money market funds

All percentage limitations apply at the time of the investment (purchase date).

O. REPORTING REQUIREMENTS

The Chief Financial Officer shall render a quarterly investment report to the Board of Supervisors that includes, at a minimum, the following information for each investment:

- Type of investment instrument (e.g., U.S. Treasury note, Federal Agency note)
- Issuer name (e.g., General Electric Capital Corp.)
- Credit quality
- Purchase date
- Maturity date
- Par value
- Purchase price
- Current market value and the source of the valuation
- Current amortized or book value
- Accrued interest
- Original yield to maturity
- Overall portfolio yield based on cost
- New investment transactions

The quarterly report shall (i) state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance, (ii) include a description of any of the County's funds, investments or programs that are under the management of contracted parties, including lending programs, and (iii) include a statement explaining the ability of the County to meet its cash flows requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

This quarterly report shall be available within 30 days following the end of the quarter, and submitted to the Board of Supervisors at the earliest reasonable opportunity, with copies published and available to all pool participants

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P. ANNUAL REVIEW OF INVESTMENT POLICY

The Chief Financial Officer shall annually prepare an investment policy that will be reviewed by the County Financial Oversight Committee and submitted to the Board of Supervisors for approval in a public meeting. Any change to the investment policy shall be reviewed and approved by the Board in a public meeting.

Q. SAFEKEEPING AND CUSTODY

All securities, whether negotiable, bearer, registered or non-registered shall be delivered either by book entry or physical delivery to the County's third party custodian.

Monthly safekeeping statements are received from custodians where securities are held. Authorized personnel, other than the person handling daily investments, shall review the statements to confirm that investment transactions have settled and been delivered to the County's third party custodian.

R. APPORTIONMENT OF EARNINGS AND COSTS

The manner of calculating and apportioning the cost of investing, depositing, banking, auditing, reporting, or otherwise handling or managing funds is as follows:

Investment earnings shall be apportioned to all pool participants quarterly based upon the ratio of the average daily balance of each individual fund to the average daily balance of all funds in the investment pool. Earnings are computed on an accrual basis and the effective date that earnings are deposited into each fund is the first day of the following quarter (January 1, April 1, July 1, and October 1).

Direct and Administrative (including indirect) costs associated with investing, depositing, banking, auditing, reporting, safekeeping, or otherwise handling or managing funds shall be netted against any moneys received pursuant to state mandated reimbursements and deducted from the gross investment earnings in the quarter received.

S. CRITERIA FRO CONSIDERING REQUEST TO WITHDRAW FUNDS

Withdrawal of funds from county treasurer pool may occur pursuant to Government Code Section 27136 and approval of the Board of Supervisors.

Assessment of the effect of a proposed withdrawal on the stability and predictability of the investment in the County Pool will be based on the following criteria:

- Size of withdrawal
- Size of remaining balances of:
 - Pool
 - Agency
- Current market conditions
- Duration of withdrawal
- Effect on predicted cash flows
- A determination if there will be sufficient balances remaining to cover costs
- Proof that adequate information has been supplied in order to make a proper finding that other pool participants will not be adversely affected.

The Chief Financial Officer reserves the right to mark a fund balance to market value prior to allowing a

County of Yolo Administrative Policies and Procedures Manual

withdrawal if it is deemed necessary to be equitable to the remaining funds.

T. TERMS AND CONDITIONS FOR NON-STATUTORY COMBINED POOL PARTICIPANTS

All entities qualifying under California Government Code Section 27133 (g) may deposit funds for investment purposes providing all of the following has been accomplished: (1) the agency's administrative body has requested the privilege, (2) has agreed to terms and conditions of an investment agreement as prescribed by the County's Board of Supervisors, (3) has by resolution identified the authorized officer acting on behalf of the agency; and (4) the Chief Financial Officer has prescribed the appropriate accounting procedures.

U. AUDIT

1. Annual Compliance Audit - The Financial Oversight Committee is not designated a Treasury Oversight Committee however the FOC may cause an annual audit pursuant to Government Code section 27134 at its discretion which may include issues relating to the structure of the investment portfolio and risk. The costs of complying with this article shall be County charges and may be included with those charges enumerated under Section 27013.
2. Quarterly Review and Annual Financial Audit – The Chief Financial Officer shall cause quarterly reviews to be made of the Treasury Division records relative to the type and amount of assets in the treasury, pursuant to Government Code sections 26920 - 26923. The Chief Financial Officer shall also cause an annual financial audit to be made of the Treasury Division's records as of June 30. In addition to an opinion on the statement of assets held in the treasury this audit shall include a review of the adequacy of internal controls.

The annual compliance audit and the annual financial audit may be combined.

The Chief Financial Officer shall report audits that contain significant audit findings to the Audit Committee of the Board of Supervisors immediately and to the full Board at the earliest reasonable opportunity. Copies of the audit reports shall be provided to the Financial Oversight Committee.

All audit recommendations shall be addressed timely and in a manner acceptable to the Board of Supervisors' Audit Committee.



Public Fund Money Market

Product Information and Disclosure

Accurate as of: 12/10/2020

Your interest rate may change. At our discretion, we may change the interest rate on your account at any time.

Tier	Interest Rate
\$5,000 and Over	0.200%

Basic Terms and Conditions	
Minimum Deposit to Open Account	\$5,000
Maintenance Fee	\$10 per statement cycle
How to Avoid the Maintenance Fee	\$0 maintenance fee when you maintain an average daily balance of \$5,000.00 during each statement cycle. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.
Interest Compounding and Crediting Frequency	Interest will be compounded every day. Interest will be credited to your account every month.
Effect of Closing an Account	If you close your account before interest is credited, you will not receive the accrued interest.
Minimum Balance to Obtain the Disclosed Interest Rate	\$5,000.00 minimum daily balance
Balance Computation Method	We use the daily balance method to calculate interest on your account. This method applies a daily periodic rate to the principal in the account each day.
Accrual of Interest on Noncash Deposits	Interest begins to accrue on the business day we receive credit for the deposit of noncash items (for example, checks).
Transaction Limitations	\$15 Excessive Withdrawal Fee will be charged for each preauthorized/automatic withdrawal or transfer to another account or third party in excess of 6 per calendar month. This limit does not apply to withdrawals or transfers made in person at a branch or ATM.
Refer to the Deposit Account Agreement, and Schedule of Miscellaneous Fees and Service Charges for additional information.	

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 14

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

SUBJECT: Participation in CPUC Arrearage Management Plan

DATE: January 21, 2021

Recommendation

Adopt a Resolution to allow VCE to participate in the California Public Utilities Commission approved Arrearage Management Program and to inform PG&E of VCE's participation.

Background

On June 16, 2020, the California Public Utilities Commission (CPUC) issued Decision 20-06-003 to reduce residential customers' disconnections due to nonpayment of electric service. On December 17, 2020, the CPUC provided more details in Resolution E-5114: "Approval of Arrearage Management Plans for Large Investor-Owned Electric and Gas Utilities." As detailed in the Resolution, the Arrearage Management Program (AMP) is a 12-month plan program to help customers who have accumulated significant arrearages to eliminate that debt. The AMP will forgive 1/12th of the customer's arrearages after each monthly on-time payment. After 12 timely payments, the customer's debt will be fully forgiven.

Under the AMP, customers who miss two consecutive monthly payments or three non-consecutive monthly payments will be removed from the program but will not forfeit forgiven amounts associated with on-time bill payments. After a 12-month waiting period, the customer is free to reenroll if the stated program requirements are still met.

The AMP Resolution approves the following:

- Cost recovery for electric arrearages through the electric Public Purpose Program Charge (PPP) from all customers of both PG&E and VCE.
- Paying remittances to Community Choice Aggregators with customers enrolled in the AMP for costs of forgiving generation-related arrearages associated with those unbundled customers (PG&E will be required to track this amount and remit to CCAs)
- Requirement for PG&E to enroll CCAs in the AMP within 60 days of receiving notice of intent to participate

A customer is eligible for AMP if they meet all of the following criteria:

- The customer is enrolled in the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) bill assistance programs for low-income customers.
- The customer has been a PG&E electric distribution customer for a minimum of six months.

- The customer has made at least one on-time payment within 24 months.
- The customer has an account balance that reaches at least \$500 in arrears (or \$250 for gas-only customers) and at least a portion of that must be 90 days old.

Analysis

Although VCE does not currently have the available data to estimate the short and long-term cash impacts of participating in the AMP, staff considered the following points when determining its recommended course:

- Without AMP participation, VCE is unlikely to recover significant portions of arrearages > 90 days from CARE and FERA customers.
- The amounts forgiven under the AMP will be refunded to VCE from PG&E via the PPP (methodology and timing is to be determined), thus there is a mechanism to recover forgiven arrearages.
- VCE customers pay the PPP and are therefore paying into the AMP forgiveness, so it's appropriate that it benefits VCE customers.
- It will assist customers who are struggling with arrearages, particularly during this ongoing time of COVID and recessionary factors.
- It provides needed support to emerging and historically marginalized communities.

Other CCA's have made public notification of their intent to participate in the AMP, including East Bay Community Energy, San Jose Clean Energy, CleanPowerSF, Redwood Coast Energy Authority, Central Coast Community Energy, and Peninsula Clean Energy.

Based on these factors, staff are recommending that VCE participate in this program to help support VCE customers challenged by the current COVID influenced economic situation.

Conclusion

VCE staff recommends that the Board approve VCE's participation in the AMP because it will enable VCE to give struggling customers assistance at no additional cost to VCE and its customers, perhaps even providing a mechanism to recover some otherwise unrecoverable costs.

AMP is also aligned with VCE's stated Objective 3.7 in its Five-Year Strategic Plan to "Integrate and address the concerns and priorities of emerging and historically marginalized communities in the design and implementation of VCE's services and programs." The AMP also allows for cost reimbursement to VCE and its customers.

Staff requests that the VCE Board adopt a Resolution to allow VCE to participate in the CPUC's approved AMP and to inform PG&E of VCE's participation.

Attachments:

1. Attachment A - Resolution Approving Participation in the Arrearage Management Program;
2. Attachment B – CPUC red-lined Resolution E-5114 outlining the terms of the Arrearage Management Program

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021-___

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE
APPROVING PARTICIPATION IN THE ARREARAGE MANAGEMENT PROGRAM (AMP)**

WHEREAS, in Decision 20-06-003, the California Public Utilities Commission (CPUC) approved a new debt forgiveness payment plan program, referred to as the Arrearage Management Plan (AMP), to assist residential customers who have accumulated significant arrearages to pay down an eliminate that debt;

WHEREAS, in Resolution E-5114, the California Public Utilities Commission (CPUC) provided additional details and AMP clarifications, including recovery of costs through the electric Public Purpose Program Charge;

WHEREAS, participating in the AMP would provide VCE an opportunity to offer assistance to its customers that are experiencing high arrearages, with a focus on emerging and historically marginalized communities;

WHEREAS, CPUC Resolution E-5114 states that any CCA who provides notice of its intent to participate in the AMP to PG&E must be enrolled by PG&E within 60 days; and,

WHEREAS, the Board of Directors desires for VCE to participate in AMP.

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

1. The Board approves VCE's participation in the California Public Utilities Commission-approved Arrearage Management Program.
2. The Board directs staff to inform PG&E of VCE's participation in the AMP as soon as practically possible and take all steps necessary for VCE to participate in the program.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Carson, VCE Chair

Alisa M. Lembke, VCE Board Secretary

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID: 18989
RESOLUTION E-5114
December 17, 2020

R E S O L U T I O N

Resolution E-5114. Approval of Arrearage Management Plans for Large Investor-Owned Electric and Gas Utilities

PROPOSED OUTCOME:

- Approves with modifications Arrearage Management Plans proposed pursuant to D.20-06-003 in Tier 2 Advice Letters
- Approves cost recovery for electric arrearages through the electric Public Purpose Program Charge from all customers.
- Approves cost recovery for gas arrearages through gas transportation rates from all customers.
- Approves paying remittances to Community Choice Aggregators with customers enrolled in Arrearage Management Plans for costs of forgiving generation-related arrearages associated with those unbundled customers.

SAFETY CONSIDERATIONS:

- There are no direct safety considerations associated with this resolution. The approved Arrearage Management Plans could result in forgiven arrearages for participants which in turn could potentially reduce disconnection of utility service for such participants. Disconnection of gas or electric service can lead to unsafe conditions.

ESTIMATED COST:

- This resolution is expected to result in costs to ratepayers ~~ranging from hundreds of thousands to totaling in~~ the low tens of millions of dollars ~~per utility~~, primarily due to the cost of forgiven customer arrearages. Costs may be substantially ~~lower~~ higher than forecasted, due to uncertainty regarding customer

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behavior in response to a new program and the continuing effects of the COVID-19 pandemic on the global economy particularly in 2021.¹

- Additional utility staffing and Information Technology (IT) costs associated with implementation of Arrearage Management Plans are also anticipated. These are expected to be significant initially during manual implementation of the programs and then decline as enrollment and tracking processes are automated.

By Advice Letters:

PG&E 4308-G/5943-E, Filed on September 9, 2020.

SCE 4287-E, Filed on September 9, 2020.

SDG&E 2902-G/3602-E, Filed on September 9, 2020.

SoCalGas 5689-G, Filed on September 9, 2020.

SUMMARY

This Resolution approves with modifications the Arrearage Management Plan (AMP) proposals submitted by Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas), collectively "IOUs," pursuant to Decision (D.)20-06-003, which required submission of Tier 2 Advice Letters (ALs) detailing plans to establish AMP programs.

The arrearages are billed amounts for electric or gas service that customers owe to an IOU but have not paid. When customers are in arrears to their IOU, at some point the IOU may disconnect service due to the arrearage. Disconnection from electric or gas service may create unsafe conditions for customers, and reducing the number of customers in arrears and the amount of arrearages owed is anticipated to reduce the number of customers who could be disconnected for nonpayment.

¹ The uncertainty of cost impacts is due to the difficulty in forecasting the number of customers who will receive arrearage forgiveness and the magnitude of arrearages owed by those customers.

The AMP program approved by this resolution essentially forgives past due arrearages for participants in the program. Per this resolution, the IOUs are authorized to record costs associated with the uncollected, forgiven arrearages in a two-way balancing account and to recover the balance through the electric Public Purpose Program (PPP) Charge for electric arrears and gas transportation rates for gas arrears during an annual true-up process. In other words, unpaid arrearages that have been forgiven in accordance with AMP will be recovered from all classes of customers that currently pay the ~~PPP Charge~~electric PPP Charge or gas transportation rates.

In addition, IOUs are also authorized to track arrearages of unbundled customers who enroll in AMP and receive arrearage forgiveness. IOUs shall track the amount of arrearages owed by these customers to Community Choice Aggregators (CCAs) that are forgiven through AMP in the same balancing account used to track and recover the cost of all arrearages forgiven through AMP and shall make remittance payments to each CCA with customers enrolled in AMP to compensate CCAs for the cost of forgiven arrearages owed to the CCA by unbundled customers.

BACKGROUND

In 2018, the CPUC opened Rulemaking (R.)18-~~0507-007-005~~ to examine new approaches to disconnections for nonpayment. Disconnecting customers' electric or gas service can create unsafe conditions for customers who depend on electric or gas service to meet basic needs such as heating, cooking, and light. The compounding effects of disconnection include disruption of the customer's normal daily activities (e.g. potentially, the ability to maintain employment) as well as broad public health and social impacts associated with the lack of electric and gas service. The CPUC opened the rulemaking following legislative direction in Senate Bill 598 (Hueso, 2017) for the CPUC to enact new policies to reduce the level of disconnections by IOUs statewide.

Decision (D).20-06-003 adopted the AMP program to assist low-income IOU customers with unpaid electric and gas utility bills. The program provides customers an opportunity to receive forgiveness for past-due arrearages in return for on-time payment of current monthly bills. Customers enrolled in AMP will

receive forgiveness of 1/12 of their starting arrearage balance for every on-time payment of a current monthly bill, with a maximum possible amount of \$8,000 in total forgiveness per 12-month period. Only customers enrolled in either the California Affordable Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs are eligible for AMP, and customers must also owe at least \$500 in arrearages, or \$250 for gas-only customers, with some portion of the arrearage at least 90 days past due.

Customers enrolled in AMP who fail to make a current on-time monthly bill payment in two sequential months or three non-sequential months shall be removed from participation, but they will retain any arrearage forgiveness received through AMP prior to their removal from the program. Customers removed from the program involuntarily, through failure to remain current on monthly bills, or after completing 12 months of on-time monthly bill payments may re-enroll after a 12-month waiting period provided that they still meet the eligibility criteria at the time of re-enrollment.

Ordering Paragraph (OP) 83 of Decision (D.) 20-06-003 directed the IOUs to submit Tier 2 Advice Letters (ALs) within 90 days of its effective date to implement AMP programs for their customers. D.20-06-003 also established the AMP Working Group, co-led by the IOUs, the California Community Choice Association (CalCCA), and The Utility Reform Network (TURN), and OP 87 of D.20-06-003 tasked the AMP Working Group with evaluating potential options for cost recovery that would resolve concerns over potentially disproportionate costs allocated to certain CCAs resulting from arrearage forgiveness before IOUs would submit their Tier 2 ALs implementing AMP.

The AMP Working Group met four times in advance of the IOUs' submission of their ALs to discuss details of the program including options for cost recovery. At the last AMP Working Group meeting on August 28, 2020, each IOU proposed to track and recover costs for both unbundled and bundled customers through the existing PPP Charge. On September 9, 2020, the IOUs filed the above ALs, reflecting the input of the Working Group by proposing to recover costs of forgiven arrearages for both bundled and unbundled customers using the PPP Charge and subsequently remit to participating CCAs the amount of forgiven arrearages owed to each CCA.

All the IOUs proposed AMP programs in their Tier 2 ALs consistent with the eligibility and operational requirements established by D.20-06-003. Eligible customers must meet the following criteria: (1) be enrolled in either California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) for bill assistance, (2) have made at least one on-time bill payment within the previous 24 months, and (3) have at least \$500 in past-due arrearages (or \$250 for gas-only customers), some portion of which is at least 90 days old. Customers who enroll in AMP are subject to the following provisions and conditions:

- Customers are entitled to arrearage forgiveness equal to 1/12 of their beginning arrearage balance for every on-time payment of a current monthly bill up to a maximum total amount of \$8,000 over 12 months of payments.
- Customers who miss two consecutive monthly payments or three non-consecutive monthly payments will be removed from the program but will not forfeit forgiven amounts associated with on-time bill payments.
- Customers who exit the program either for non-payment or successful completion of all 12 monthly payments may re-enroll after a 12-month waiting period.
- Customers who receive unbundled electric service from a CCA are eligible for participation in AMP, but may only receive forgiveness for the portion of their arrearage owed to the IOU, unless the customer's CCA voluntarily participates in the program to forgive generation-related costs. IOU customers that receive generation from a CCA still pay the IOU for transmission and distribution costs, and the AMP covers costs attributable to these IOU services.
- Customers who receive gas service through a Core Transport Agent (CTA) may participate in AMP only for arrearages owed to the IOU for distribution-related costs if the IOU is the billing agent for those costs.

- Customers participating in Net Energy Metering (NEM) are not eligible for participation at this time. Parties discussed options for allowing NEM customers to enroll in AMP during the AMP Working Group meetings, but agreed that more discussion would be necessary before establishing a framework for NEM customers to enroll in AMP given differences in billing practices between the IOUs.

All IOUs proposed in their ALs to recover costs for forgiven arrearages through the PPP Charge. At the four AMP Working Group meetings, IOUs and stakeholders discussed options for ensuring adequate cost recovery and proportional allocation of costs for unbundled customers shared by IOUs and CCAs. At the fourth and final AMP Working Group meeting on August 28, 2020, parties agreed the most reasonable option to ensure adequate cost recovery was for IOUs to jointly recover both IOU and CCA costs for forgiven arrearages through the PPP Charge and to subsequently remit to CCAs the amount of recovered costs attributable to generation-related CCA costs. This option was preferred by stakeholders out of concern that alternative options, such as requiring CCAs to track and recover costs from their own customers directly, would be overly burdensome to implement, disproportionately costly to small CCAs, and could deter CCA participation in AMP.

The IOUs proposed to record the cost of forgiven debt in each utility's Residential Uncollectibles Balancing Account (RUBA). This residential balance will be transferred to the PPP adjustment mechanism during the annual true-up process before being recovered from all customers. In addition, the IOUs will also recover costs associated with generation-related forgiven debt for unbundled customers and will provide remittance payments to relevant CCAs to compensate each participating CCA for the cost of forgiving generation-related debt under AMP.

The IOUs propose to track and recover implementation related costs for AMP, such as staff workload and IT costs, using memorandum accounts authorized by D.20-06-003.

NOTICE

Notice of AL 4308-G/5943-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the AL was mailed and distributed in accordance with Section 4 of General Order 96-B. Notice of AL 4287-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the AL was mailed and distributed in accordance with Section 4 of General Order 96-B. Notice of AL 3602-E/2902-G was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the AL was mailed and distributed in accordance with Section 4 of General Order 96-B. Notice of AL 5689-G was made by publication in the Commission's Daily Calendar. SoCalGas states that a copy of the AL was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

CalCCA protest of PG&E AL 4308-G/5943-E

PG&E's AL 4308-G/5943-E was timely protested by the California Community Choice Association (CalCCA). CalCCA argues that PG&E's AL 4308-G/5943-E proposal that third party cost recovery be addressed during a later phase of this proceeding renders it noncompliant with OP 87 of D.20-06-003. Specifically CalCCA asserts that OP 87 required the IOUs to propose a mechanism in their Tier 2 Advice Letters for proportional allocation of recovered AMP costs between CCAs and IOUs following discussion within the AMP Working Group.²

CalCCA also objected to PG&E's proposal that prior to Commission approval of the cost recovery mechanism, individual CCAs be required to track and recover costs of unbundled customer generation-related arrearages forgiven under AMP. The CCAs argued that this proposal could force CCAs with high AMP participation to recover AMP costs from only their own customers and increase rates significantly. CalCCA requests clarification of when PG&E intends to receive notification from participating CCAs of their intent to participate, as CCA participation in AMP is voluntary.

² CalCCA Protest to PG&E AMP Advice Letter in response to Decision 20-06-003, in AL 4308-G/5943-E, dated September 29, 2020

CalCCA also argued~~s~~ that PG&E had~~s~~ not explained what customer information it will share with participating CCAs to track the status, and associated costs, of unbundled customers enrolled in AMP. This information includes the number of customers eligible for AMP, account numbers of customers enrolled in AMP, and account numbers for customers who have missed one payment, and the frequency with which PG&E will report such information to CCAs. CalCCA indicated its members would require additional information, such as the starting arrearage balance of customers participating in AMP and the dollar amount of arrearage forgiveness already processed, to implement PG&E's proposal for individual CCAs to track and recover costs from their own customers, if AMP were implemented prior to receiving explicit Commission approval.

In response to CalCCA's protest, PG&E argued~~s~~ AL 4308-G/5943-E ~~is~~ was compliant with OP 87 because it addresses cost recovery for arrearages forgiven in PG&E's territory. PG&E proposes that individual CCAs track and recover unbundled customer forgiven arrearages, if AMP enrollment began prior to Commission authorization of its proposal for cost recovery. PG&E requests that CCAs notify PG&E of their voluntary participation within 45 days of submission of AL 4308-G/5943-E (October 26, 2020) because PG&E needs sufficient time to allocate resources for participating CCA customers. To CalCCA's request for more frequent sharing of customer information to track the status and costs associated with unbundled customers enrolled in AMP, PG&E responds that it will work directly with CCAs to address concerns over frequency of information sharing for unbundled customers. PG&E stated~~s~~ that the information sharing described in AL 4308-G/5943-E is sufficient for tracking and recovering unbundled customer costs from participating in AMP.

CalCCA protest of ALs SCE 4287-E and SDG&E 2902-G/3602-E

SCE's AL 4287-E and SDG&E's AL 2902-G/3602-E were timely protested by CalCCA, which requested that SCE and SDG&E clarify how frequently remittances recovered for generation-related arrears would be rendered to CCAs. CalCCA also requested that SCE and SDG&E be required to share specific customer information with CCAs at least weekly and objected to SDG&E's proposal to share customer information through the regular data request process. Finally, CalCCA requested that SCE clarify whether its proposal that CCAs

notify it of intent to participate within 45 days of AL 4287-E refers to submission or approval.

SCE responded to CalCCA's protest and indicated that costs for forgiven arrearages under AMP would only be recovered in the subsequent year after the customer has received forgiveness in an annual true up process. SCE also advised that Customer Service Re-Platform implementation would force the company to implement AMP manually first, and SCE's existing billing system will treat arrearages forgiven due to on-time bill payment as a customer payment. This will allow SCE to remit payments for generation-related forgiven costs within a week of a customer's on-time payment. Accordingly, SCE will remit payments to CCAs under the manual system for many months before seeking cost recovery through the PPP Charge.

Regarding frequency with which unbundled customer information would be shared with CCAs, SCE argues that monthly sharing of information is sufficient since payments will be made monthly and the number of participating customers for any given CCA is likely to be small. Finally, SCE clarified it is requesting that participating CCAs notify SCE of their intent to participate within 45 days of AL 4287-E's submittal (October 24, 2020) to ensure SCE has sufficient time to prepare for managing the cases of unbundled customers participating in AMP. SCE specifically indicated that allowing CCAs to notify SCE of their intent to participate 45 days *after* Commission approval of AL 4287-E could occur on the same day that AMP enrollments begin.

SDG&E responded to the protest of CalCCA and clarified that its proposed mechanism for cost recovery would result in monthly remittances to CCAs as costs are incorporated into rates through the PPP charge and collected from customers monthly.³ SDG&E indicated that remitting payments on a more frequent basis than monthly would be unworkable and unnecessary to ensure cost recovery, and that it would share unbundled customer information with participating CCAs on an ongoing monthly basis since customers are billed monthly. SDG&E further indicated sharing information more frequently during replacement of its Customer Information System would be overly burdensome

³ CalCCA Protest to Southern California Edison's and San Diego Gas and Electric's AMP Advice Letters in response to Decision 20-06-003, dated September 29, 2020.

because the reports would be created manually during the system replacement. SDG&E pledged to continue working with CCAs in its territory to meet additional needs for information sharing should such need arise.

DISCUSSION

The CPUC has reviewed the ALs and the protests and has determined that they are compliant with the AMP program implementation directives and eligibility and operational criteria set forth in D.20-06-003. The IOU cost recovery proposals are discussed here and approved with noted clarifications.

Pursuant to OP 87 of D.20-06-003, the AMP Working Group met four times to discuss proposals for appropriate cost recovery, which were submitted for socialized cost recovery via the PPP charge. The Working Group determined that the framework of recovering IOU and CCA costs jointly through the PPP charge, with CCA costs remitted by IOUs after cost recovery, was reasonable. Under this framework, IOUs will record all arrearages forgiven under AMP within the RUBA. During the annual true-up process, each IOU will adjust its PPP charge to recover these costs from all customers. Subsequently, IOUs will remit revenue equal to the recovered costs of generation-related arrears for each participating CCA in its territory on a monthly basis.

In AL 4308-G/5943-E, PG&E requested that the Commission provide guidance on the customer classes from which to seek recovery for AMP costs. PG&E noted that CARE costs are recovered from all customers, while FERA costs have historically been allocated only to residential customers. Resolving this issue requires a policy determination by the CPUC as to whether to allocate costs only to the residential customer class, or to all customer classes. Allocating these costs to only residential customers could increase the number of disconnected residential customers by increasing bills for those customers by a greater incremental quantity than if the costs were allocated across all customer classes. In addition, spreading these costs over all customer classes is consistent with the historic approach to recovering uncollectible arrearages through the [electric](#) PPP

Charge.⁴ Moreover, since it is the intent of this proceeding and the AMP programs specifically to reduce disconnections of residential customers and manage arrearages, it makes sense to recover AMP costs from all customer classes through the PPP Charge or gas transportation rates as well. Therefore, the CPUC finds that it is reasonable to recover the cost of forgiven AMP debt from all customers.

CalCCA protested PG&E's proposal to require participating CCAs to track and recover costs of unbundled customer generation-related arrearages before the Commission has formally approved cost recovery via the PPP charge. PG&E responded that its proposal only requires CCAs to track and recover costs of forgiving arrearages owed to the CCA, not costs of arrearages owed to IOUs. Furthermore, PG&E noted that this proposal is only intended to apply to AMP costs incurred prior to CPUC approval of the proposal for joint cost recovery through the PPP charge and subsequent remittance payments to participating CCAs. PG&E additionally indicated its proposal to address its joint cost recovery proposal during a subsequent ratesetting phase of this proceeding reflects its intent to enable unbundled customers to participate in AMP as soon as feasible.

We reject CalCCA's arguments and approve PG&E's proposal to recover costs using the PPP charge and remit the portion of arrearages attributable to CCA costs to the relevant CCA. We find this reasonable because CalCCA's own protest endorsed PG&E's proposed solution to recover costs using the PPP charge and remit the portion of arrearages attributable to CCA costs to the relevant CCA. CalCCA's protest indicated that its objection was only applicable to PG&E's proposed alternative intended to take effect in the absence of CPUC approval of the proposal for joint cost recovery using the PPP charge. Since this resolution provides that approval, CalCCA's objections are moot.

CalCCA requested clarification of when PG&E intended to receive notification from participating CCAs of their intent to participate. Like SCE, PG&E indicated that a CCA seeking to participate should notify PG&E within 45 days of submittal of AL 4308-G/5943-E (October 26, 2020) to provide sufficient time for PG&E to allocate resources and make preparations to track costs and billing

⁴ Traditionally, utility arrearages are written off as uncollectible, evaluated in General Rate Cases, and recovered from all customer classes through the PPP Charge.

information for unbundled customers participating in AMP. However, SDG&E and SCE did not directly address the timeline for a CCA notifying its local IOU that it intends to participate in the AMP program. To date, a number of CCAs have conveyed publicly via the service list in this proceeding that they intend to participate in AMP, meeting PG&E and SCE's requested timing for advance notification.⁵ However, setting a one-time deadline for advance notification when new CCAs are continually being formed or when existing CCAs were not in a position to rapidly meet the IOUs' requested deadlines is needlessly arbitrary. It is reasonable for IOUs to request advance notification to prepare for other CCAs that decide to participate in AMP. We direct the IOUs to meet a 60-day timeline following notification from other CCAs that it intends to participate in AMP in the future. Since the IOUs only requested 45 days of advance notification for the first CCAs that would participate in AMP, 60 days of advance warning in the future should be enough to accommodate other CCAs once the program is already operating.

CalCCA requested clarification from PG&E regarding the type and frequency of information it intended to share with CCAs. This issue was also raised in CalCCA's protest of SCE AL 4287-E and SDG&E's AL 3602-E/2902-G, in which CalCCA requested that information be shared at least weekly with CCAs. PG&E, SCE, and SDG&E all indicated they would continue working with CCAs in their territories to deliver any information needed to track unbundled customers participating in AMP. However, we find CalCCA's proposal (as described in their comments on this Draft Resolution and discussed further below) to allow CCAs to avoid errors by receiving the information they need in an existing weekly report to be a reasonable solution. Therefore, we will require the IOUs to include information on a CCA customer's AMP enrollment status, amount of forgiven arrears, and number of missed payments in the weekly reports known variously as the "4013," "Customer List," or "Customer Reconciliation Report." ~~However, providing reports weekly or even more frequently would be unnecessarily labor intensive, especially during the manual phase of implementation, since customers are billed monthly and would only experience a change in program status or arrearage amount on the same basis. At this time, we conclude that monthly reporting of the requested information should be~~

⁵ These CCAs include the California Choice Energy Authority, Western Community Energy, and the Clean Power Alliance of Southern California.

~~sufficient for tracking and recording costs associated with unbundled customers participating in AMP, which all IOUs have indicated is workable.~~

CalCCA protested SCE's AL 4287-E and SDG&E's AL 3602-E/2902-G requesting clarification of how frequently each IOU intended to remit payments of costs associated with unbundled customers participating in AMP that IOUs have recovered on behalf of participating CCAs. SCE and SDG&E both replied by indicating that cost recovery would be sought through an annual true-up process that would adjust monthly rates, meaning that cost recovery would begin in the subsequent year after AMP has begun, and payments would be remitted on a monthly basis as customer bills containing the adjusted PPP charge are paid to the IOU. The Commission finds that this is a reasonable remittance schedule for IOUs to provide recovered costs to participating CCAs and directs PG&E to follow the same remittance schedule to ensure consistency across IOUs.

PG&E, SCE, and SDG&E requested that customers participating in Net Energy Metering (NEM) be excluded from participation in AMP during initial implementation due to the complexity of resolving differences between the way AMP would function for most customers compared to NEM customers. We agree that integrating NEM customers in an AMP framework will require more discussion, so we will prohibit them from participating in AMP at this time.

PG&E and SoCalGas both requested that customers receiving gas service from Core Transport Agents or receiving Core Aggregation Transportation service only be eligible for arrearage forgiveness under AMP for transportation costs owed to the IOU, rather than being eligible for forgiveness for arrearages owed to the third party. The Commission finds that this is a reasonable solution to the issue of third party gas costs because the issue of costs owed to Core Transport Agents was not addressed in D.20-06-003. We direct that costs for gas service owed to third parties other than the IOUs are not eligible at this time for arrearage forgiveness under AMP. While SDG&E did not directly address the issue in its AL 2902-G/3602-E, SDG&E indicated at the fourth AMP Working Group meeting on August 28, 2020 that it does not bill for third parties providing Core Aggregation Transportation service and therefore is not authorized or able to waive past-due charges on behalf of these providers. It is therefore reasonable

to exclude gas arrearages of CTA-served customers from SDG&E's AMP program as SDG&E is not in a position to administer the program.

The IOUs should begin enrolling customers ~~30~~45 days after the effective date of this resolution. In a letter dated August 13, 2020, the Energy Division Director indicated to the IOUs "An expeditious implementation of this program is a critical facet of the CPUC's on-going effort to reduce disconnections among residential customers," and conveyed that IOUs should be prepared to implement AMP plans by the end of 2020. Accordingly, all four IOUs proposed to implement their AMP programs the later of 90 days from the date of the letter (November 11, 2020) or 45 days following the Commission's approval of the utility's AL. It is reasonable for the IOUs to request preparation time after AMP program proposals have been approved. Therefore, in order to ensure customers may begin obtaining the benefits of arrearage forgiveness as quickly as is feasible, we direct the IOUs to begin enrolling customers ~~30~~45 days after the effective date of this resolution.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. ~~Please note that comments are due 20 days from the mailing date of this resolution.~~ Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments ~~on November 16, 2020, and will be placed on the Commission's agenda no earlier than 30 days from today.~~

The Commission received six sets of party comments. One set of comments was submitted jointly by three parties, the National Consumer Law Center, the Center for Accessible Technology, and The Utility Reform Network, urging adoption of the Draft Resolution in full. The remaining five sets of comments addressed specific aspects of the Draft Resolution and are discussed below.

Cost to Ratepayers

PG&E, SCE, and SDG&E raised the concern that estimated costs of program implementation could be higher than the low millions of dollars per utility that was projected during the AMP Working Group meetings. Specifically, PG&E, SCE, and SDG&E reported that arrearages for customers who would be eligible for AMP have grown substantially compared to the amounts reported at the July 30, 2020, AMP Working Group meeting. We agree with the utilities that growth in the number of customers eligible for AMP as well as the magnitude of arrearages potentially eligible for forgiveness would increase the estimated cost associated with this resolution to a range of tens of millions of dollars.

Participation of Direct Access Customers and Customers Served by Energy Service Providers

PG&E and SCE requested modification of the resolution to accommodate participation by customers of load-serving entities (LSEs) other than IOUs and CCAs, such as residential Direct Access (DA) customers. SCE indicated that it bills DA customers directly on behalf of LSEs, and “does not see any operational distinction to allow AMP participation for CCA customers but not DA customers.”⁶ SCE also reported a LSE serving residential DA customers in SCE territory notified SCE of its intent to participate in AMP on October 23, 2020.

The CPUC supports allowing as many residential customers as possible to participate in AMP, and we do not foreclose the possibility of allowing DA customers to participate in AMP in the future. However, D. 20-06-003 does not authorize participation of residential DA customers in AMP, despite explicitly indicating the CPUC’s intent to include CCA customers in AMP. LSEs serving residential DA customers have not been parties to R.18-07-005, have not participated in the AMP Working Group process, and have not directly commented on the proposal to date, unlike CCAs, which have been involved in the stakeholder process for AMP from the outset. Therefore, we will reject this request at this time.

Temporary Remittance Process for Southern California Edison

⁶ SCE Comments on Draft Resolution E-5114 dated December 7, 2020, Page 4

SCE commented regarding its process for paying remittances to participating CCAs for forgiven arrearages during its Customer Service Re-Platform (CSRP). SCE clarified that its proposed temporary process for manually provided remittances to participating CCAs will continue even after AMP enrollment and program operation processes have been automated following CSRP. SCE reported the temporary process would continue because the modifications to SCE's billing platform would require separate changes to automate remittance payments to CCAs in addition to the changes required to automate AMP enrollment and basic program operation. We acknowledge SCE's clarification and agree with their proposed change reflecting that SCE may remit payments for generation-related forgiven arrears to the CCAs on an earlier basis.

Eligibility of Third-Party Charges, Taxes, and Fees for Arrearage Forgiveness

PG&E, SCE, SDG&E and SoCalGas raised the issue of whether third-party charges, taxes, and fees collected by IOUs from customers on behalf of a third party, such as a local government, would be eligible for arrearage forgiveness alongside the rest of a customer's past-due bill. PG&E specifically requested guidance on this matter without expressing a position. SDG&E argued the Draft Resolution does not preclude including third-party charges in a customer's eligible arrearage balance and reported that it intends to include these charges in customer's eligible arrearage balance unless the CPUC provides contrary guidance. SoCalGas supports including third-party charges in a customer's eligible arrearage balance and that it proposes to continue treating these charges as uncollectible bad debt for the purpose of remittance payments to third parties. SCE supports including third-party charges in a customer's eligible arrearage balance and requested revision of the Draft Resolution to reflect this.

We agree that unpaid third-party charges, fees, and taxes appearing on a customer's bill constitute a portion of that customer's total arrearage, and therefore these charges should be forgiven at the same time and subject to the same conditions as the rest of a customer's arrearage. The utilities should recover the cost of these third-party charges, fees, and taxes through the electric PPP charge for electric charges and through gas transportation rates for gas charges. Furthermore, the utilities should continue following their existing practices for

ensuring that third-party charges, fees, and taxes associated with uncollectible “bad debt” are remitted to the appropriate entities.

Eligibility of Master Meter Customers

SCE commented regarding the eligibility of residential customers served by a master metered account for AMP. SCE reported that it is unable to identify individual customers served by a master metered account, making it impossible to: (1) determine whether such customers are in fact eligible for AMP or (2) distinguish between arrearage amounts owed by different customers served by the same master metered account. SCE requested that the Draft Resolution be modified to specify that customers served by master metered accounts shall not be eligible for AMP.

We acknowledge SCE’s concern regarding the feasibility of implementing AMP for master metered customers, and we agree with the proposed modification. However, as it is the CPUC’s intent that as many otherwise-eligible customers be authorized to participate in AMP as possible, we do not preclude the possibility of allowing residential customers served by a master metered account to participate in AMP in the future, and we will continue to work with IOUs and other stakeholders to identify a feasible approach to allow these customers to do so. At this time, residential master metered accounts shall not be eligible for participation in AMP.

Implementation Date

PG&E, SCE, SDG&E, and SoCalGas requested that the implementation date be changed from 30 days after approval of the resolution to 45 days after approval. The IOUs indicated this change was necessary to provide sufficient time to prepare staff to administer a new program manually and noted that the original deadline for implementation would require staff to carry out much of that preparation during the holidays. The IOUs also noted that the AMP Working Group had agreed that an implementation deadline of 45 days following approval of the Tier 2 ALs would be appropriate. Due to these operational challenges and the prior agreement among AMP Working Group members, we

will grant this request and require the IOUs to begin enrolling eligible customers in AMP within 45 days following the approval of this resolution.

Eligibility of CTA Customers for Forgiveness of Gas Distribution Charges Only

SoCalGas and PG&E commented on the eligibility of gas charges owed by CTA customers to CTAs for arrearage forgiveness. SoCalGas requested clarification that CTA customers may only receive arrearage forgiveness for the portion of their arrearage owed to the IOU for distribution related costs, not for the portion of their arrearage owed to the CTA for gas procurement charges. PG&E clarified that it supports allowing forgiveness of gas procurement charges for CTA customers when PG&E is the billing agent on behalf of the CTA.

We agree with SoCalGas’s recommended revision clarifying that only distribution-related charges owed by CTA customers to an IOU should be eligible for arrearage forgiveness, and we reject PG&E’s request to allow forgiveness of gas procurement charges owed to CTAs. As it is the CPUC’s intent to enable as many eligible customers to participate in in AMP as fully as possible, we do not foreclose the possibility of including these charges as allowable for forgiveness in the future.

Approval of Residential Uncollectibles Balancing Account Advice Letters

SoCalGas and SDG&E commented regarding their pending ALs establishing the Residential Uncollectibles Balancing Act (RUBA). Both IOUs noted that implementing AMP will require them to record costs associated with participating customers in the RUBA, meaning that the AL must be approved before they can implement AMP. The CPUC appreciates this concern and expects that these ALs will be approved prior to the new implementation deadline 45 days after final approval of this resolution.

Recovery of Costs for Gas Customer Arrearage Forgiveness Through Transportation Rates

In its comments, PG&E requested that the Draft Resolution be revised to direct the IOUs to recover costs associated with forgiven gas arrearages using gas transportation rates instead of the gas PPP Charge. PG&E indicated it supported the proposed framework of socializing costs across all customers for recovery, but noted that some customers do not pay the gas PPP Charge, meaning that cost recovery through that vehicle would not allow PG&E to recover costs from all customers. We agree with PG&E's concern and direct the IOUs to recover the cost of forgiven gas arrearages through gas transportation rates on an equal cents per therm basis.

Clarification of Remittance Process to Third-Party Service Providers

PG&E commented seeking clarification regarding the remittance process to third-party service providers such as CTAs and CCAs. PG&E requested that language directing IOUs to align the frequency of their remittance payments to CCAs be modified to clarify that third-party service providers other than CCAs, such as CTAs and ESPs may also participate in AMP and therefore receive remittance payments. PG&E also requested clarification that the annual true-up to allow cost recovery of forgiven arrearages should occur on a continuous basis rather than only one time.

The CPUC supports allowing as many residential customers as possible to participate in AMP, and we do not foreclose the possibility of allowing residential customers of CTAs, ESPs, and other third-party service providers to participate in AMP in the future. However, CTAs, ESPs, and other third-party service providers have not been parties to R.18-07-005, have not participated in the AMP Working Group process, and have not directly commented on the proposal to date, unlike CCAs, which have been involved in the stakeholder process for AMP from the outset. Therefore, pending an opportunity to solicit comment from stakeholders on the feasibility and appropriateness of including residential customers of third-party service providers to participate in AMP, we will reject this request at this time. We agree with PG&E's requested clarification regarding the ongoing, rather than one-time, nature of the annual true-up to reflect the previous year's forgiven arrearages.

Temporary Waiver of Account and Arrearage Age Requirements to Accommodate SDG&E Billing System Upgrade

SDG&E commented to highlight its request in AL 3602-E/2902-G to temporarily suspend eligibility requirements related to the age of a customer’s account and arrearage. SDG&E indicated it plans to suspend the requirement that a customer’s account have recorded at least one full on-time bill payment in the previous 24 months once SDG&E transitions to its new Customer Information System in April 2021 due to technical difficulties incorporating this requirement during the system change. SDG&E also indicated it plans to waive the requirement that a portion of a customer’s arrearage be at least 90 days old during the first 90 days of the program’s operation, allowing customers with large arrearages less than 90 days old to participate in the program at its outset. SDG&E’s comment did not request modification of the resolution to accommodate these waivers. We believe SDG&E’s request to temporarily waive these requirements is reasonable.

More Frequent Reporting of Unbundled Customer Information to Community Choice Aggregators

CalCCA commented regarding how frequently IOUs should be required to report information about unbundled customers to CCAs for cost tracking and customer assistance purposes. CalCCA argued that receiving these reports on a monthly basis, as the Draft Resolution required, could result in miscommunications between the IOU and CCA, errors in reconciling customer accounts, and mistaken referrals of customers to collections for apparent nonpayment. CalCCA recommended the CPUC require IOUs to modify existing regular weekly customer reports IOUs provide to CCAs for reconciliation purposes to indicate AMP enrollment status.

We appreciate the logistical challenges for IOUs to implement AMP manually and are sensitive to their concerns about potential workload impacts from requiring excessive reporting. However, we find CalCCA’s proposal to be a reasonable solution, allowing CCAs to receive the information they need to avoid errors by providing that information in an existing weekly report. Therefore, we will require the IOUs to include information on a CCA customer’s

AMP enrollment status, amount of forgiven arrears, and number of missed payments in the weekly reports known variously as the "4013," "Customer List," or "Customer Reconciliation Report."

FINDINGS

1. Decision (D.)20-06-003 directed Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) to file Tier 2 ALs to implement Arrearage Management Plans (AMPs).
2. PG&E, SCE, SDG&E, and SoCalGas (collectively, the IOUs) filed Tier 2 ALs on September 9, 2020 proposing to implement Arrearage Management Plan (AMP) programs that comply with the eligibility and operational requirements of D 20-06-003.
3. D.20-06-003 ordered the IOUs to propose a method for cost recovery in ALs addressing the proportional recovery concerns raised by California Community Choice Association (CalCCA) in the Arrearage Management Working Group.
4. The IOUs proposed in their ALs to recover costs for arrearages forgiven through an AMP plan using the existing electric Public Purpose Program (PPP) Charge, which would be adjusted annually and recovered from all customers.
5. It is reasonable for the IOUs to request that any Community Choice Aggregator (CCA) seeking to allow its customers to participate in AMP programs notify the utility 60 days in advance of the CCA's customers being eligible to enroll in an AMP program.
6. It is reasonable for the IOUs to provide unbundled customer information for those participating in AMP programs to the customer's CCA on a monthly weekly basis using existing reports known variously as the "4013," "Customer List," or "Customer Reconciliation Report." ~~and attempt to meet additional requests from participating CCAs to share information that are necessary to track and recover costs for unbundled customers participating in AMP programs.~~
7. It is reasonable for the IOUs to provide remittances for generation-related costs for unbundled customers receiving arrearage forgiveness to

participating CCAs on a monthly basis once the PPP charge has been adjusted to recover these costs from customers.

8. Customers receiving Net Energy Metering are not eligible for arrearage forgiveness under AMP programs until issues related to their participation can be discussed in greater detail.
9. It is reasonable that charges owed to third party gas providers, such as Core Transport Agents, for service such as Core Aggregation Transportation will not be eligible for forgiveness of costs other than transportation-related gas costs owed to PG&E and SCG.
10. It is reasonable to exclude Core Aggregation Transportation customers in SDG&E territory because SDG&E does not bill on behalf of third-party gas providers and therefore does not have arrearages from customers of these companies to forgive.

10.11. It is reasonable for IOUs to recover costs from forgiven customer bills attributable to third-party taxes, charges, and fees from electric customers through the electric PPP Charge and from gas customers through gas transportation rates.

THEREFORE IT IS ORDERED THAT:

1. The requests of Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) to implement Arrearage Management Plan (AMP) programs as requested in PG&E AL 4308-G/5943-E, SCE AL 4287-E AL SDG&E 3602-E/2902-G, and SoCalGas 5689-G are approved as clarified in this resolution.
2. PG&E, SCE, and SDG&E,~~and SoCalGas~~ are authorized to include costs for forgiven arrearages through AMP plans in their annual adjustments of their electric Public Purpose Program (PPP) charge and recover those costs from all customers accordingly.
- 2.3. PG&E, SCE, SDG&E, and SoCalGas are authorized to include costs for forgiven gas arrearages through AMP plans in their annual adjustments of their gas transportation rates and recover those costs from all customers accordingly.

~~3.4.~~ PG&E, SCE, SDG&E, and SoCalGas are authorized to provide monthly remittance payments to any Community Choice Aggregator (CCA) that has elected to participate in a utility's Arrearage Management Plan program equal to forgiven customer arrearages associated with generation-related costs borne by the Community Choice aggregator and recovered through the Public Purpose Program charge.

~~4.5.~~ PG&E, SCE, SDG&E, and SoCalGas shall request 60 days of advance notification from any Community Choice Aggregator in the utility's service territory seeking to participate in the AMP program after each utility has begun enrolling customers in AMP plans.

~~5.6.~~ PG&E, SCE, SDG&E, and SoCalGas shall provide modify existing weekly unbundled customer reports, various known as "4013," "Customer List," and/or "Customer Reconciliation Report," to include each CCA customer's AMP enrollment status, amount of forgiven arrears, and number of missed payments information on unbundled customers participating in AMP plans to the customer's CCA at least monthly that is necessary to track and recover costs for unbundled customers participating in AMP programs.

~~7.~~ After the first annual adjustment of the Public Purpose Program (PPP) Charge rates to recover costs of forgiven arrearages, PG&E, SCE, and SDG&E, and SoCalGas shall provide remittance payments to participating CCAs on a monthly basis for costs recovered through the PPP rates charge for generation-related costs associated with arrearages forgiven under an Arrearage Management Plan for customers of the participating Community Choice Aggregator.

a. Subsequent adjustment of rates will occur on an annual basis.

b. SCE may remit payments for generation-related forgiven arrears to the CCA on an earlier basis.

~~6.~~

~~7.8.~~ Customers receiving Core Aggregation Transportation service may enroll in AMP subject to the following conditions:

a. PG&E and SoCalGas customers receiving Core Aggregation Transportation service from third-party gas providers, including Core Transport Agents, shall only be eligible for forgiveness of gas charges owed to PG&E and SoCalGas when either company is the billing agent for the customer.

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b. Customers of SDG&E receiving Core Aggregation Transportation service from Core Transport Agents shall not be eligible for forgiveness of gas arrearages.

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9. PG&E, SCE, SDG&E, and SoCalGas shall begin enrolling eligible customers in AMP programs within ~~30~~45 days of the effective date of this decision.

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10. Residential master metered accounts shall not be eligible for participation in AMP at this time.

8,11. Costs attributable to third-party taxes, charges, and fees, such as utility user tax, constitute a portion of a customer's arrearage and should be forgiven pursuant to successful completion of the AMP, with the cost of these forgiven arrears recovered from electric customers through the electric PPP Charge and from gas customers through gas transportation rates.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2020; the following Commissioners voting favorably thereon:

Rachel Peterson
Acting Executive Director

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Resurgence Solar I, LLC Power Purchase Agreement Approval

DATE: January 21, 2021

RECOMMENDATION

Staff recommends the Board adopt a resolution that:

1. Approves the Power Purchase Agreement (PPA) by VCEA for 100% of the output for 20 years of the Resurgence Solar I project under development by NextEra Energy Resources (NextEra).
2. Authorizes the Interim General Manager to execute the PPA substantially in the form attached and authorizes the Interim General Manager, in consultation with General Counsel, to make minor changes to the PPA so long as the term and price are not changed.

BACKGROUND

In June 2020, the VCE Board approved a 72 MW photovoltaic (PV) PPA. Shortly after the execution of the PPA, the counterparty failed to satisfy a significant provision outlined in the PPA. Staff notified the counterparty of the default and initiated the PPA termination in July 2020. VCE Board was briefed on the default and provided staff direction to move forward with a replacement project.

Staff engaged ten reputable developers identifying twelve opportunities ranging in size from 50-100 MW. All opportunities were CAISO interconnected (in-state and out-of-state), wind, PV, PV+Storage, and index+ products. After conducting evaluations with the assistance of SMUD, the PV+Storage proposals were determined to offer the most value to VCE customers. Based on the original Board direction in July, PPA negotiations commenced with two entities which ultimately resulted in the finalized PPA with a wholly owned subsidiary of NextEra that is being recommended for approval.

COUNTERPARTY

NextEra Energy Inc. subsidiary, NextEra Energy Resources is the world's largest developer of renewable energy from wind and solar. NextEra has a proven record of success and extensive experience in developing, constructing and operating wind, solar, and battery storage projects across North America. The company has been generating clean energy for more than 35 years and is the largest generator of wind and solar power in North America. Through its subsidiaries,

NextEra owns and operates 124 wind facilities with a total generating capacity of 16,280 MW, as well as 34 utility-scale solar facilities with a generating capacity of 3,156 MW. NextEra has constructed dozens of renewable projects as big or larger than the Resurgence Solar I project and has developed and constructed some of the largest storage projects in the industry. NextEra is the world's leading generator of renewable energy and is a major developer in energy storage. In the U.S. and Canada, NextEra has approximately 164 MW of energy storage projects in operation and over 2 GW of energy storage projects with signed long-term contracts currently under development.

In the state of California, NextEra owns and operates wind, solar, battery energy storage facilities and transmission assets in 20 counties. NextEra has executed long-term contracts for renewable energy supply with several California Community Choice Aggregators (CCAs) including Silicon Valley Clean Energy, Marin Clean Energy, CleanPowerSF, Sonoma Clean Power Authority, Clean Power Alliance of Southern California, and Central Coast Community Energy for solar, storage, and wind.

NextEra will develop, own and operate the Resurgence Solar I project.

PROJECT DESCRIPTION

The Resurgence Solar I project will consist of a 90 MW PV field combined with a 75 MW (300 MWhs) lithium-ion battery storage system. The project will be part of a larger project that could be up to a 138 MWs. The existing "brownfield" site is the home of the SEGS project which was one of the original solar thermal sites built in the 1980's. The legacy project ceased operation in 2019. NextEra plans to repurpose the site and decommission the SEGS assets and replace with PV + storage. The development plan will require a conditional use permit from San Bernadino County as well as an approved decommissioning plan from the California Energy Commission (CEC), both of which are not anticipated to be controversial. Environmentally, the site is disturbed land with no wetlands, biological or cultural issues. NextEra is using the existing transmission infrastructure.

Beginning at the end of 2022, VCE will receive approximately 35% of its annual needs from the renewable facility for 20 years. The competitively priced energy and capacity will allow VCE to secure stable pricing for both energy and resource adequacy. The agreement also outlines a \$200,000 workforce development fund as well as a \$100,000 local sustainability fund that will be paid for by NextEra and will be distributed as directed by the VCE Board.

CONCLUSION

Staff believes the price and terms of the PPA supports VCE's policy objectives, help meet regulatory requirements, and are competitively priced. In addition, contracting with a reputable, proven developer for a project of this magnitude is important to VCE and staff believes NextEra meets that criteria.

Attachments

1. Attachment A – Resurgence Solar I LLC Power Purchase Agreement
2. Resolution - Resurgence Solar I LLC Power Purchase Agreement

Attachment A

Resurgence Solar I LLC Power Purchase Agreement

**RENEWABLE POWER PURCHASE AGREEMENT
COVER SHEET**

Seller: Resurgence Solar I, LLC

Buyer: Valley Clean Energy Alliance, a California joint powers authority

Description of Facility: A solar photovoltaic electric generating facility with a net nameplate capacity of 90 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 75 MW AC / 300 MWh located near the City of Boron within San Bernardino County, California, as described further in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	[REDACTED]
Procure major equipment	[REDACTED]
Obtain federal and state discretionary permits	[REDACTED]
Expected Construction Start Date	[REDACTED]
Guaranteed Construction Start Date	[REDACTED]
Expected Commercial Operation Date	[REDACTED]
Guaranteed Commercial Operation Date	12/31/2022

Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]

5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████
16	████████
17	████████
18	████████
19	████████
20	████████

Guaranteed Capacity: 165 MW of total Facility capacity

Guaranteed Storage Capacity: 75 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 90 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	████████
2	████████

3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

Product:

- PV Energy
- Discharging Energy
- Green Attributes
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services
- Capacity Attributes

Scheduling Coordinator: Buyer

Security:

Development Security: [REDACTED]

Performance Security: [REDACTED]

Guarantor: [REDACTED]

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of January 21, 2021 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

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

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.**

The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect Affiliate subsidiaries.

“After-Tax Basis” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“Agreement” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Approved Forecast Vendor” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Bankrupt” or **“Bankruptcy”** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator,

administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility:

- (i) not having submitted a Self-Schedule or Energy Supply Bid for the MW subject to the reduction;
- (ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or
- (iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.



“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Event of Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107

(2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“**Capacity Availability Factor**” has the meaning set forth in Exhibit C.

“**Capacity Damages**” means collectively Storage Capacity Damages and PV Capacity Damages.

“**Capacity Test**” or “**CT**” means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be

used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” means the date Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED]

“**Commercial Operation Storage Capacity Test**” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“**Compliance Actions**” has the meaning set forth in Section 3.12(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged or financed its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.



“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**Credit Notice**” has the meaning set forth in Section 8.10.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Fitch, or Moody’s. If ratings by S&P, Fitch, and Moody’s are not equivalent, the lower rating shall apply.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Curtailed Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

To the extent permitted by CAISO, Buyer shall use commercially reasonable efforts to deliver Charging Energy to the Storage Facility during such Curtailment Order.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED]

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(c).

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

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

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

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

“Effective Date” has the meaning set forth on the Preamble.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Storage Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage

Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Energy In into Energy Out, as calculated by dividing Energy Out in the applicable month of the Delivery Term by Energy In in the same month of the Delivery Term, expressed as a percentage.

“Electrical Losses” means all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy to the Storage Facility.

“Eligible Intermittent Resource Protocol” or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

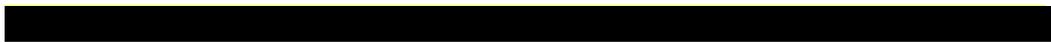
“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Contract Term.

“Energy In” means all Energy delivered into the Storage Facility (not including Energy metered into the Storage Facility when not subject to a Charging Notice) measured at the Storage Facility Metering Point by the Storage Facility Meter.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” means all Energy output from the Storage Facility as measured at the Storage Facility Metering Point by the Storage Facility Meter.



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

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

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

“**Expected Energy**” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“**Facility**” means the combined Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of PV Energy and Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Storage Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Fitch**” means Fitch Ratings Ltd., or its successor.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Forecasted Product**” has the meaning set forth in Section 4.3(b).

“**Forecasting Penalty**” has the meaning set forth in Section 4.3(f).

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.10(a).

“**Full Capacity Deliverability Status**” or “**FCDS**” has the meaning set forth in the CAISO Tariff.

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Storage Facility is eligible for Full Capacity Deliverability Status.

“**Future Environmental Attributes**” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to such avoided emissions, such as Green Tag Reporting

Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard by Buyer after delivery by Seller of such Green Attributes to Buyer.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e.,

measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“**Guarantor**” means, with respect to Seller, any Person that (a) [REDACTED], (b) has a Credit Rating of [REDACTED] from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“**Imbalance Energy**” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Energy from the Facility to the Delivery Point.

“**Installed Capacity**” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“**Installed PV Capacity**” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“**Installed Storage Capacity**” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

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

“**Interconnection Capacity Limit**” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point in the amount of 90 MW.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area Resource**” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**NEER**” means NextEra Energy Resources, LLC.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

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

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those rules, requirements, and procedures set forth in Exhibit Q.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (a) cash, (b) a Letter of Credit or (c) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transfer” means any of the following:

(a) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or any of its Affiliates; *provided*, that (i) Ultimate Parent retains the authority, directly or indirectly, to control such Party, or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) (i) the direct or indirect transfer of shares of, or equity interests in, Seller to a Lender, (ii) any exercise by a Lender of its rights and remedies under the Financing Documents, and (iii) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(c) a Change of Control of Ultimate Parent;

(d) the direct or indirect transfer of shares of, or equity interests in, Seller to a Person; *provided*, following the transfer (i) an Affiliate of NEER continues to hold an economic interest

in the Facility, (ii) the entity that operates the Facility is, or contracts with, a Permitted Transferee, and (iii) Seller, or such Person, maintains the applicable performance assurance requirements; or

(f) a transfer of the Facility to a Person pursuant to any of the following (i) all or substantially all of the assets of Ultimate Parent, (ii) all or substantially all of Ultimate Parent's renewable energy generation portfolio, or (iii) all or substantially all of Ultimate Parent's solar generation portfolio; provided, that in the case of each of (i), (ii) and (iii), following such transfer the entity that operates the Facility is, or contracts with, a Permitted Transferee and Seller, or such Person, maintains the applicable performance assurance requirements.

"Permitted Transferee" means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

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

"Planned Outage" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

"PMAX" means the applicable CAISO-certified maximum operating level of the Storage Facility.

"PMIN" means the applicable CAISO-certified minimum operating level of the Storage Facility.

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

"Portfolio" means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

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

“**Portfolio Financing**” means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**PV Energy**” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**RA Compliance Showing**” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section **Error! Reference source not found.**(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover Sheet which is the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section **Error! Reference source not found.**(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Storage Facility for such month was less than the Qualifying Capacity of the Storage Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA

Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

“Security Interest” has the meaning set forth in Section 8.9.

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

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Initiated Test**” has the meaning set forth in Section 4.9(c).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Showing Month**” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**SOC**” or “**State of Charge**” means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP-15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy produced or discharged by the Facility (and not otherwise included in the Efficiency Rate) that is used within the Facility to power the information technology, telecommunications, lights, motors, facility control systems and other electrical loads that are necessary for operation of the Facility.

“**Storage Capability**” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity and/or Effective Storage Capacity, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter shown in Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm

to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

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

“**Tax Credits**” means the ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means PV Energy delivered (a) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Total YTD Calculation Intervals**” has the meaning set forth in Exhibit P.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means NextEra Energy, Inc., a Delaware corporation.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(e).

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent.

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

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility that are capable of being satisfied on the Commercial Operation Date have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(g) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 Development; Construction; Progress Reports.

Within fifteen (15) days after the close of (i) each calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date and continuing through the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request

by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.**

If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.**

Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.**

During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.**

Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy and/or Discharging Energy delivered from the Generating Facility and/or the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.**

Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.**

No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to [REDACTED] days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] of the Renewable

Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.**

Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

[REDACTED]

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to [REDACTED]

[REDACTED]

[REDACTED] provided that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the

amount of (X) the Qualifying Capacity of the Storage Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Storage Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.**

Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.**

Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.**

Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.**

If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all

of such obligations shall be capped at [REDACTED] of Guaranteed Capacity (“**Compliance Expenditure Cap**”).

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

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

3.13 **Project Configuration.**

In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed

by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Forecasting.

Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the

hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“**Real-Time Forecast**”), that directly result from a Forced Facility Outage, Force Majeure Event or other cause that has not been communicated or is not reasonably available to Buyer or Buyer’s SC, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate, subject to the limitations of Section (b) of Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with the then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices

or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.9(c).) To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, prior to the Commercial Operation Date Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

4.6 Reduction in Delivery Obligation.

(a) Facility Maintenance.

(i) Seller shall provide to Buyer written schedules for Planned Outages for each of the Generating Facility and Storage Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments on the proposed Planned Outage schedule no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Generating Facility or Storage Facility shall be scheduled or planned from each June 1 through September 30 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 Guaranteed Energy Production.

During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). “**Guaranteed Energy Production**” means an amount of PV Energy, as measured in MWh, equal to [REDACTED] constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 **Storage Facility Availability; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller’s payment of liquidated damages pursuant to Section (f) of Exhibit C.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Operating Restrictions and the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies the Storage Capability for such Calculation Interval shall be deemed [REDACTED]

(e) Upon Buyer's reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, and subject to the Operating Restrictions, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below [REDACTED] of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer for all CAISO costs and charges associated with Charging Energy used for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS.

Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS

Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

ARTICLE 5 TAXES

5.1 Allocation of Taxes and Charges.

Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility.

Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the generation and sale of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 Maintenance of Health and Safety.

Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to

the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.**

The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter or account for all Station Use. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner compliance with the CAISO Tariff and subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the

definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification.**

Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.**

Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document

and verify the amount of Product delivered by the Facility for any Settlement Period during the 2 preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Energy In, Energy Out, Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.**

Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.**

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.**

Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5)

Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 Seller's Development Security.

To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) days after the Effective Date. Seller shall maintain the Development Security in full force and effect; provided that the Development Security shall not be replenishable. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 Seller's Performance Security.

To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting); *provided*, however, that in no event shall Seller have any obligation to replenish the Performance Security to the extent that the aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds one (1) times the Performance Security requirement. Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 9
NOTICES**

9.1 Addresses for the Delivery of Notices.

Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice.

Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the

extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.**

Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.**

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.**

If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability

to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default.

An “**Event of Default**” shall mean:

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section **Error! Reference source not found.**, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start [REDACTED] the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year beginning with the second Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the Expected Energy for such period, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [REDACTED] threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any two (2) consecutive Contract Years during the Delivery Term, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least [REDACTED] multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [REDACTED] multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each

case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or Fitch or A3 by Moody's;

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

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

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

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(c) with respect to Buyer as the Defaulting Party, the failure of Buyer to provide the Buyer Credit Support in accordance with Section 8.10(e), and such failure is not remedied within twenty (20) Business Days after Notice thereof.

11.2 **Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.**

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon; *provided*, in no event shall the sum of the Damage Payment and any Delay Damages paid to date exceed an amount equal to [REDACTED]. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the Settlement Amount plus any or all other amounts due to or from Buyer (as of the Early Termination Date), less the fair market value (determined in a commercially reasonable manner) of the Facility, regardless of whether or not Facility is actually sold or disposed of; provided that such Damage Payment shall not exceed the amount that Seller has posted as Development Security. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment.

As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the

Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes with Respect to Termination Payment or Damage Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.

If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights and Remedies Are Cumulative.

Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation.

Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 Seller Pre-COD Termination.

At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to [REDACTED]

**ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 No Consequential Damages.

EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages.

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

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS,

LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS **Error! Reference source not found.**, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller's Representations and Warranties.

As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions

of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.**

As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.**

Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.**

The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, on December 1st of each of the first ten (10) years in the Delivery Term, Seller shall cause twenty thousand dollars (\$20,000) to be deposited, for a total of two hundred thousand dollars (\$200,000), into a “Workforce Development Fund” maintained by Buyer. The investment plan for utilizing such funds shall be developed by Buyer at the discretion of Buyer’s board. Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If requested by Buyer, Seller shall complete a “Supplier Diversity and Labor Practices” questionnaire, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Local Sustainability.**

The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to supporting local sustainability efforts. Accordingly, on December 1st of each of the first ten (10) years in the

Delivery Term, Seller shall cause ten thousand dollars (\$10,000) to be deposited, for a total of one hundred thousand dollars (\$100,000), into a “Local Sustainability Fund” maintained by Buyer. The investment plan for utilizing such funds shall be developed by Buyer at the discretion of Buyer’s board.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments.

Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee or if it is a Permitted Transfer. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit S (“Collateral Assignment Agreement”).

14.3 Permitted Assignment by Seller.

Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Permitted Transfer by Seller.**

Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller gives at least thirty (30) days' prior written notice to Buyer.

14.5 **Shared Facilities; Portfolio Financing.**

Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

**ARTICLE 15
DISPUTE RESOLUTION**

15.1 **Governing Law.**

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

15.2 **Dispute Resolution.**

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.**

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable

attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims.

Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella or excess insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with a combined single limit of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage [REDACTED] [REDACTED] (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation

or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella or excess liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information.

The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality.

The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall,

to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.**

Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.**

Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual

or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.**

Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19
MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.**

This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.**

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.**

Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.**

Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.**

Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.**

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.**

This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.**

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this

Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.**

If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.**

Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

RESURGENCE SOLAR I, LLC

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Resurgence Solar I

Site includes all or some of the following APNs: 0491-101-16-0000, 0491-101-17-0000, 0491-101-18-0000, 0491-101-19-000, 0491-151-38-0000, 0491-151-39-0000, 0491-151-40-0000, 0498-171-05-0000, 0498-171-06-0000

City: Boron

County: San Bernardino, CA

Zip Code: 93516

Latitude and Longitude: 35.0131, -117.5487

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 90 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 75 MW AC / 300 MWh located near the City of Boron within San Bernardino County, California. The Facility is a portion of a larger 138 – 150 MW solar + storage project. Seller may install additional inverter capacity to account for production and delivery losses.

Site Diagram: Attached

Delivery Point: P-node

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: To be established prior to the Commercial Operation Date at the Kramer Junction 115kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Southern California Edison

Additional Information: None

Site Diagram:

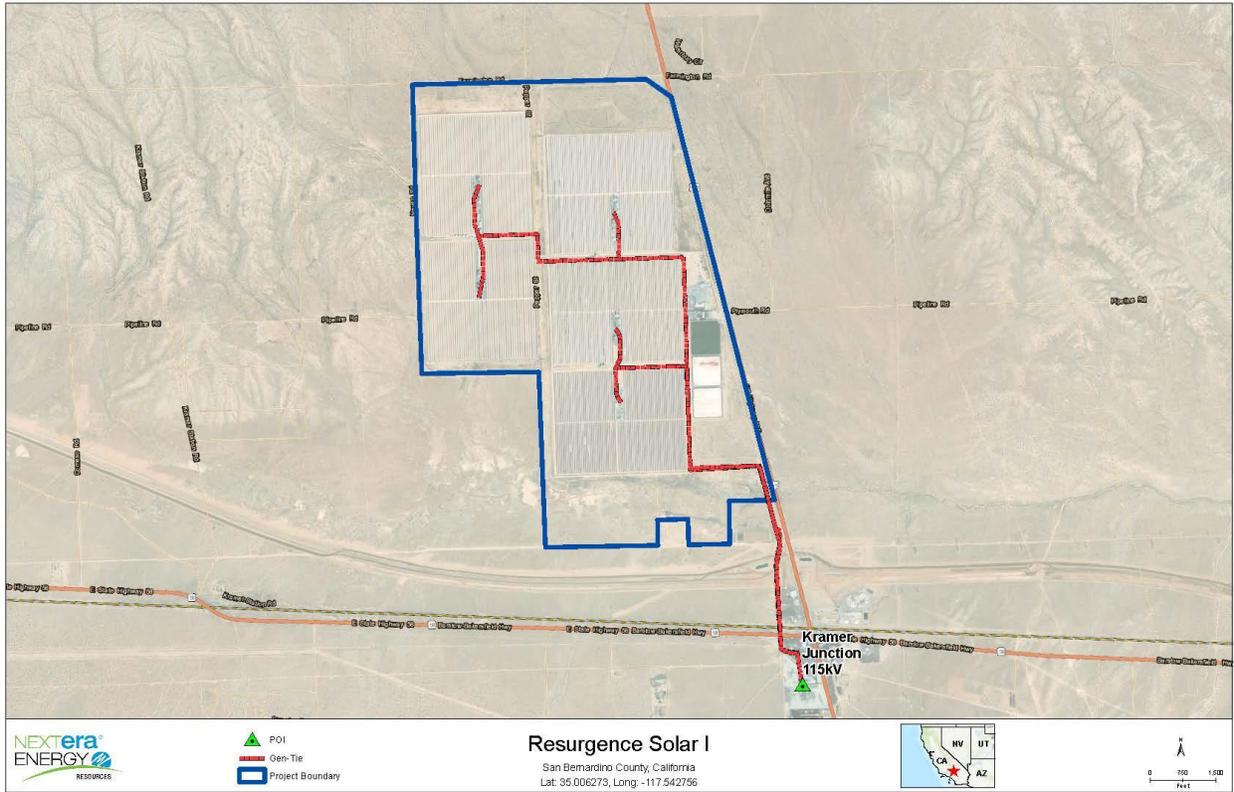


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, and as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] by such payment of Commercial Operation Delay

Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. Notwithstanding anything in this Agreement to the contrary, the aggregate Delay Damages shall not exceed the amount of the Development Security.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or
 - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED] for any reason, including a Force Majeure Event; *provided*, however, that Seller shall be allowed additional day-for-day extensions beyond the [REDACTED] not to exceed a total of cumulative extensions granted under Sections 4(a), 4(b) and 4(c) under the Development Cure Period of [REDACTED] solely to the extent due to a Force Majeure Event related to COVID-19. The cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED] (if the maximum Commercial Operation Delay Damages are paid), which may be extended up to [REDACTED] if the Development Cure Period is extended up to [REDACTED] due to a Force Majeure Event related to COVID-19. Upon request from Buyer, Seller shall provide

documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity, and the applicable portions of the Agreement shall be adjusted accordingly consistent with the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the applicable portions of the Agreement shall be adjusted accordingly consistent with the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be [REDACTED]

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

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

$$\text{Capacity Availability Factor} = 0$$

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to [REDACTED] of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than [REDACTED] of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{[\text{REDACTED}]}{[\text{REDACTED}]}$$

provided that, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (g) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the

Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D
SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or

penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F-1

MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY

[MW Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2
MONTHLY EXPECTED PV ENERGY
[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-4
MONTHLY AVAILABLE STORAGE CAPABILITY
[MWh Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

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

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = 

D = the Renewable Rate, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means PCC1 Renewable Energy Credits with the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

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

provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___ [DATE]____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: _____
Its: _____
Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;
and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the _____ previously identified _____ Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Valley Clean Energy Alliance, a California joint powers authority

[Address]

Ladies and Gentlemen:

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

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

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

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

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

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

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

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

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

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority, [Buyer address], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

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

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Valley Clean Energy Alliance, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Valley Clean Energy Alliance

Name and Title of Authorized Representative

Date _____

EXHIBIT L
FORM OF GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by _____ (“**Guarantor**”), in favor of _____ (“**Counterparty**”).

RECITALS:

- A.** WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary _____ (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain [*Insert Name of Agreement*] [dated/made/entered into/effective as of] _____, 20__ (the “**Agreement**”); and
- B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [*spell out the dollar amount*] U.S. Dollars (U.S. \$_____) (the “**Maximum Recovery Amount**”).
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages, unless such damages are owed by Obligor to Counterparty pursuant to the Agreement.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).
- (b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement or (ii) 11:59:59 Eastern Prevailing Time [_____, _____]; *provided, however*, that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

By: _____

Name: _____

Title: _____

EXHIBIT M
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

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

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

**EXHIBIT N
NOTICES**

<p>[SELLER'S NAME] ("Seller")</p>	<p>VALLEY CLEAN ENERGY ALLIANCE ("Buyer")</p>
<p>All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management</p> <p>Phone: [REDACTED] Email: [REDACTED]</p>	<p>All Notices: Street: 604 2Nd Street City: Davis, CA 95616 Attn: [REDACTED]</p> <p>Phone: [REDACTED] Email: [REDACTED]</p>
<p>Reference Numbers: Duns: Federal Tax ID Number:</p>	<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices: Attn: Business Management Phone: [REDACTED] E-mail: [REDACTED]</p>	<p>Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Scheduling: Attn: Phone: Email:</p>	<p>Scheduling: Attn: Day Ahead Trading, Real Time Trading Phone: [REDACTED] Email: [REDACTED] [REDACTED]</p>
<p>Confirmations: Attn: Phone: Email:</p>	<p>Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>
<p>Payments: Attn: Business Management Phone: [REDACTED] E-mail: [REDACTED]</p>	<p>Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Wire Transfer: Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date.</p> <p>BNK: ABA: ACCT:</p>	<p>Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]</p>

EXHIBIT O
STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.
- E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
 - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
 - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

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

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its

review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“**Supplementary Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter.

- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
 - (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
 - (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
 - (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
 - (10) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.
- Test Results
 - (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 75 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{\text{A}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “Available Effective Storage Capacity,” which shall be the sum of the capacity, in MW AC, expected from each system inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated assuming normal operating conditions pursuant to the manufacturer’s guidelines.

(b) “**Total YTD Calculation Intervals**” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated. The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation

Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of "available Effective Storage Capacity" and "Storage Capability" in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) In the first and second Contract Year, for the final year-end Storage Capacity Availability Payment True-Up Amount, the YTD Annual Storage Capacity Availability shall be increased by an amount equal to the ratio of Planned Outage hours as defined in Section 4.6 divided by 8760 hours, not to exceed ■■■. For the purposes of this calculation, if the Planned Outage is for less than a full hour, the Planned Outage will be counted as an equivalent percentage of the applicable hour. If, during any applicable hour, the Planned Outage is for less than the Effective Storage Capacity, the Planned Outage shall be counted as an equivalent percentage of such hour.

EXHIBIT Q
OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

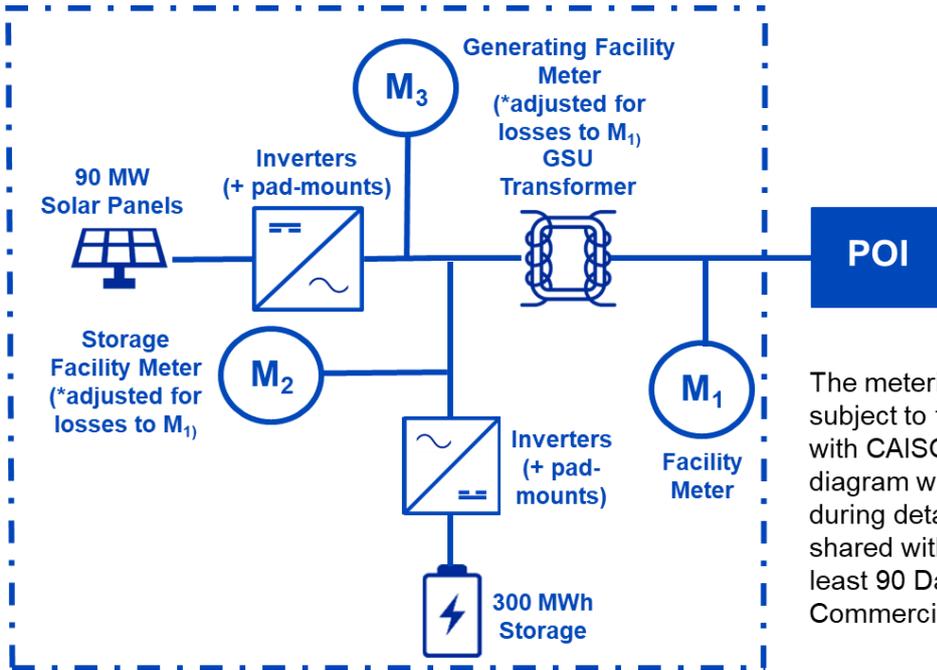
I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium Ion Batteries	
Storage Unit Name:	[Unit Name and Number]	
A. Contract Capacity		
Guaranteed Storage Capacity (MW):	75	
Effective Storage Capacity (MW):	75	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	115	
Maximum Storage Level (MWh):	300	
Minimum Storage Level (MWh):	0	
Stored energy capability (MWh):	300	
Maximum Discharge (MW):	75	
Maximum Charge (MW):	75	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	[REDACTED]	
C. Charge and Discharge Rates		
Mode	Maximum (MW)	Ramp Rate (MW/s) Description
Energy (Charge)	75	75 MW/s
Energy (Discharge)	75	75 MW/s
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. Maximum energy throughput of [REDACTED] MWh/year
2. Maximum annual average State of Charge (SOC) of less than [REDACTED]

**EXHIBIT R
METERING DIAGRAM**



The metering diagram is illustrative and subject to final metering arrangement with CAISO. A more precise metering diagram will be developed by Seller during detailed project design and shared with Buyer at least 90 Days prior to the Guaranteed Commercial Operation Date.

EXHIBIT S
FORM OF COLLATERAL ASSIGNMENT AGREEMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[], is executed by and among [BUYER], a [legal form of Contracting Party] organized under the laws of the State of California (the "Contracting Party"), [_____] a [_____] (the "Project Owner"), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement").

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a “Termination Event”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. Collateral Agent will have the right, but not the obligation, to cure a Termination Event on behalf of Project Owner, only if Collateral Agent sends a written notice to Contracting Party before the later of (i) the expiration of any cure period under this Agreement, and (ii) fifteen (15) Business Days after Collateral Agent's receipt of notice of such Termination Event from Contracting Party, indicating Collateral Agent's intention to cure. If the Collateral Agent elects to exercise its right to cure as herein provided by providing a written notice to the Contracting Party, it shall have a period of (1) thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or (2) if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event"), the Collateral Agent shall have sixty (60) days to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, further, that in the event of items (i) or (ii) above, such time period shall not exceed one hundred eighty (180) days. Any cure period for the Collateral Agent shall not commence until the later of (i) the end of the cure period of the Project Owner under the Assigned Agreement and (ii) written notice from the Contracting Party to the Collateral Agent of a Termination Event.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(e) Following a Termination Event by the Project Entity under the Assigned Agreement, the Contracting Party may require the Collateral Agent, if the Collateral Agent has provided the notice set forth in subsection (c) above, to provide to Contracting Party a report concerning:

- (i) The status of efforts by Collateral Agent to develop a plan to cure the Termination Event;
- (ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Collateral Agent must provide the report to Contracting Party within twenty (20) Business Days after Notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular Termination Event after that Termination Event has been cured.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event (i) the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request within forty-five (45) days after such rejection or termination, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent's designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement, or (ii) if the Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of the Assigned Agreement, promptly after the Contracting Party's written request, the Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with the Contracting Party having substantially the same terms as the Assigned Agreement for the remaining term thereof, provided that in the event a designee of the Collateral Agent, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by the Contracting Party, not to be unreasonably withheld.

5. Substitute Owner. If the Collateral Agent elects to sell or transfer the Project (after the Collateral Agent directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of the Collateral Agent (for example, a foreclosure sale where a third party is the buyer, or otherwise), then the Collateral Agent must cause the transferee or buyer to assume all of the Project Entity's obligations arising under the Assigned Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of "Permitted Transferee" as defined in the Assigned Agreement and (ii) is an entity that the Contracting Party is permitted to contract with under applicable law.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not, without the prior written consent of the Collateral Agent which consent shall not be unreasonably withheld, delayed or conditioned, amend or modify the Assigned Agreement in any material respect, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement. The Collateral Agent shall have the right to consent before any termination of the Assigned Agreement which does not arise out of a Termination Event.

8. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]
Facsimile No.: [_____]

The Project Owner: _____

The Contracting Party: _____

9. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

10. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

11. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of [_____].

[Signature page follows on next page.]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____] as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:
[_____]

By: _____
Name:
Title:

Assigned Agreement

Schedule I

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

[Schedule III]

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021- ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING A POWER PURCHASE AGREEMENT (PPA) WITH RESURGENCE SOLAR I, LLC AND AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT

WHEREAS, on July 9, 2020, the Board directed the Interim General Manager to engage in a bilateral process to obtain a long-term renewable power supply, ten developers were engaged both in and out of state and VCE received twelve offers;

WHEREAS, VCE determined the project(s) that were best suited for VCE’s needs and with power available on a time line that also met VCE’s power needs;

WHEREAS, NextEra Energy Resources proposed to construct a 90-MW AC solar photovoltaic facility coupled with a 75-MW/300MWh (4-hour) lithium-ion battery energy storage system, near the city of Boron in San Bernardino County, California;

WHEREAS, a PPA has been negotiated with NextEra Energy Resources for VCE to procure output from the Resurgence Solar I project for 20 years; and,

WHEREAS, Resurgence Solar I, LLC is a wholly owned subsidiary of NextEra Energy Resources.

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

1. The Power Purchase Agreement (PPA) between VCE and Resurgence Solar I, LLC for 100% of the output for 20 years of the Resurgence Solar I project under development by NextEra Energy Resources is hereby approved.
2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA so long as the term and price are not changed.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Carson, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with Resurgence Solar I, LLC

Attachment A

Power Purchase Agreement with Resurgence Solar I, LLC

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Valley Clean Energy’s Policy regarding PG&E allocation of Greenhouse Gas (GHG)-free (Large Hydro and Nuclear) resources to Community Choice Aggregators

DATE: January 21, 2021

RECOMMENDATION

1. Authorize the Interim General Manager to enter into an agreement with PG&E to accept only the Large Hydro portion of the 2021 GHG free allocations.

PURPOSE

The purpose of this report is to update the VCE Board on the GHG-free allocations that are being offered from PG&E for 2021. In addition, staff is seeking Board approval to authorize the Interim General Manager to enter into an agreement with PG&E to accept the hydro only portion of the 2021 allocations.

BACKGROUND

PG&E owns or contracts for a number of GHG-free resources (including large hydro and nuclear from Diablo Canyon Power Plant). PG&E has been able to count these resources on its power content label (PCL) to meet its GHG-free targets. Load serving entities (LSEs), on the other hand, have been paying for those same assets through Power Charge Indifference Adjustment (PCIA), yet do not receive any of the GHG-free benefits – this includes VCE and other CCA’s in PG&E’s service territory.

In mid-2019, CCAs approached PG&E to discuss whether PG&E would be agreeable to selling energy from their large hydro facilities¹. PG&E ultimately refused to make sales in 2019, but subsequently approached CCAs and offered to allocate GHG-free resources (nuclear and large hydro) to CCAs and other eligible load serving entities (LSEs).

¹ Large hydro and nuclear resources count as GHG-free on the power content label (PCL), and investor-owned utilities (IOUs) have been benefiting from counting those resources to meet their GHG-free targets. LSEs, on the other hand, have been paying for those same assets through PCIA, yet do not receive any of the GHG-free benefits through the PCL.

Eventually the allocations became available in 2020, and the VCE Board elected to receive the large hydro only attributes. This became effective in the third quarter of 2020 and VCE will receive approximately 30,000-35,000 MWHs in 2020 (note: VCE will not know the final numbers until Q2 2021). This allocation includes the power resource in addition to the GHG free energy attributes and represented approximately 5% of VCE’s annual load in 2020. Due to the variability of hydro production in any given year (i.e wet v. normal v. dry), it is not practical to forecast load offset for 2021 or future years.

There is no obligation to accept this allocation of GHG-free attributes. An LSE can choose to accept neither resource pool, one or the other, or both. The volume that each LSE receives will ultimately depend on the volume of electricity generated by each resource pool and the proportion of PG&E’s load served by the LSE.

Staff discussed this 2021 allocation with the Community Advisory Committee (CAC) at the December 2020 meeting. The majority of the CAC members were supportive of accepting only the hydro allocations and the CAC recommended that the Board to only approve 2021. That is, beyond 2021 potential allocations should continue to be brought forward to discuss in the event conditions change. Staff is supportive of this approach as well.

TENTATIVE SCHEDULE

Tentative Timeline (<i>assumes December 17, 2020 CPUC approval of Draft Resolution 5111-E without modification</i>)	
Week of November 16, 2020	• Notice Issued (complete)
Week of November 30, 2020	• PG&E will provide Eligible LSEs with 2021 Sales Agreement for review (complete)
Thursday, December 10, 2020 (ACTION REQUIRED)	• Feedback on form Sales Agreement due to PG&E [Note: VCE submitted on 12/8/2020]
Thursday, December 17, 2020	• Scheduled CPUC Voting Meeting (complete)
Thursday, January 14, 2021	• VCE Board Action (PENDING)
Monday, January 18, 2021	• Expected final and non-appealable date of CPUC approval (30 days following issuance of approval via Resolution, assuming no applications for rehearing are filed)
Up to Week of January 25, 2021 (ACTION REQUIRED)	• PG&E will provide Eligible LSEs Offers and a final version of 2021 Sales Agreement • PG&E and Eligible LSEs will execute 2021 Sales Agreement
Monday, February 1, 2021 (<i>pending execution of Sales Agreement</i>)	• Expected start of Delivery Period under 2021 Sales Agreement
Week of June 14, 2021 (<i>approximation</i>)	• First Quarterly Report with estimated Allocation Amount will be distributed
On or about April 15, 2022	• Final Report will be distributed to participating LSEs

RECOMMENDATION

As discussed with the Board in mid-2020 on this same topic related to 2020 allocations, staff continues to believe that:

- The potential reputational risk from accepting the nuclear allocation as part of our GHG-free target is greater than the potential savings for accepting this allocation.
- The monetary savings for either of these allocations is very low.
- Generally nuclear is not considered a clean fuel source due to risks associated with spent fuel and practical long-term disposal options.

Based on these factors, staff believes that VCE is better served by accepting the hydro allocation for 2021, but not the nuclear allocation, and should revisit this topic for 2022 and beyond.

In summary, the staff recommendation to the Board is:

1. Accept the 2021 allocation of large hydro carbon free attributes paid for by VCE customers;
2. Reject the 2021 allocation of nuclear power carbon free attributes; and
3. The Interim General Manager is authorized to finalize, execute, and sign all agreements with PG&E on behalf of VCE and in consultation with legal counsel to implement the Board's decision.

ATTACHMENT: Resolution – Accept 2021 allocation of large hydro carbon free attributes

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021-___

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ACCEPTING THE 2021 ALLOCATION OF LARGE HYDRO POWER GHG ATTRIBUTES FROM PACIFIC GAS & ELECTRIC AND AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE RELATED AGREEMENTS

WHEREAS, the Valley Clean Energy Alliance (“VCE”) 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”), the City of Woodland and the City of Winters (“Cities”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs;

WHEREAS, large hydro and nuclear do not directly emit any GHG emissions, but do not qualify under the state’s RPS program;

WHEREAS, Pacific Gas and Electric (PG&E) owns and contracts for a number of GHG-free resources (including large hydro and nuclear) and count these resources on its power content label to meet its GHG-free targets;

WHEREAS, Load serving entities (LSEs), including Community Choice Aggregators (CCAs) such as VCE, have been paying for those same assets through Power Charge Indifference Adjustment (PCIA), but do not receive any of the GHG-free benefits;

WHEREAS, in 2020 PG&E approached CCAs and offered to allocate GHG-free resources to CCAs and other eligible LSEs requiring no payment, and limited in the resources to which it applies (in-state, large hydroelectric, and nuclear);

WHEREAS, in May 2020 VCE Board elected to accept the large hydroelectric GHG-free attributes for calendar year 2020;

WHEREAS, for calendar year 2021 PG&E is again offering LSEs large hydro and nuclear GHG-free attributes.

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

1. Accept the 2021 allocation of large hydro carbon free attributes paid for by VCE;
2. Reject the 2021 allocation of nuclear power carbon free attributes; and
3. The Interim General Manager is authorized to finalize, execute, and sign all agreements with PG&E on behalf of VCE and in consultation with legal counsel to implement the Board's decision.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Carson, VCE Chair

Alisa M. Lembke, VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 17

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: 2021 Procurement Plan, Including Directives and Delegations for 2021 Power Procurement Activities

DATE: January 21, 2021

RECOMMENDATION

Staff recommends the Board adopt a resolution that:

1. Approves the 2021 Procurement Plan contained in this staff report.
2. Approves Directives and Delegations to SMUD for procuring portions of VCE's power portfolio for calendar year 2021 through 2023, guided by the principals described in this report.
3. Approves the elimination of specific portfolio renewable and carbon-free targets in 2022 to improve procurement and financial flexibility as long-term renewable projects come online.

OVERVIEW

The recommended actions would approve VCE's procurement actions for portions of VCE's portfolio for calendar years 2021 through 2023. These directives and associated delegations are presented in Table 1 below.

BACKGROUND AND ANALYSIS

On December 12, 2019, the Board approved VCE's Procurement Guide which established the procurement plan for 2020 forward.

The purpose of this staff report is to update the approval of delegations necessary for VCE and SMUD staff to continue procurement activities on behalf of VCE's power supply portfolio. This update provides a high-level overview of the products necessary to meet compliance

obligations and maintain a balanced power portfolio while meeting power supply portfolio targets set by the VCE Board.

Principles Guiding Procurement and Delegations of Authority

The procurement plan and delegations of authority will be guided by the following principles and allow VCE and SMUD staff to:

- Meet VCE's compliance, regulatory, and business practice requirements under the California Public Utilities Commission (CPUC), California Independent System Operator (CAISO), and other relevant regulatory agencies;
- Satisfy the power supply portfolio targets set by the VCE Board;
- Minimize the potential risk exposure of the portfolio, according to practices defined in VCE's Wholesale Energy Risk Manual;
- Provide the appropriate amount of administrative flexibility for staff to carry out procurement actions.

Product Categories

Resource Adequacy

As a CPUC jurisdictional Load Serving Entity, VCE is required to meet the compliance obligations of the Resource Adequacy (RA) program. The RA program ensures sufficient resources are available to support the anticipated demand in California. The CPUC along with CAISO administer the program and define the requirements necessary to meet reliability standards. VCE is allocated its share of obligations based on its load ratio of PG&E's service territory. The delegation for this product allows VCE to meet its RA obligations in a timely manner, support reliability of the grid, and avoid financial penalties.

Renewable Energy

CPUC sets minimum renewable energy requirements under its Renewable Portfolio Standards (RPS) program. Along with meeting any annual renewable targets set by the Board, VCE is obligated to adhere to required renewable percentages over the CPUC-defined compliance periods. Some of this renewable energy obligation will be met with Power Purchase Agreements (PPAs) for resources that are still under construction (e.g. 50MW Aquamarine Solar project). The rest of the requirements can be met with short-term purchases of RPS-qualified energy from existing resources in the market. The delegation approvals are designed to allow staff to procure around the uncertain new resource online dates to meet renewable energy portfolio targets. Procurement of these short-term purchases of RPS-qualified energy are expected to diminish in future years as VCE's long-term PPA's displace the need.

Carbon-Free Energy

Carbon-Free energy is a voluntary product that reduces the carbon content of VCE's power supply. This comes mainly from large-hydro generation resources that do not qualify as Renewable under the RPS program. The delegation for this product allows staff to procure

enough carbon-free energy to meet the target set by the Board, taking into consideration the uncertainty of annual PG&E carbon-free allocations.

Price Hedging Energy

Purchasing energy on a forward basis allows VCE to fix some of its power supply costs ahead of more volatile and uncertain spot market prices. A procurement milestone is set to ensure the targeted amount of energy hedging is completed in a timely manner. Under VCE's Enterprise Risk Management Policy, VCE's Enterprise Risk Oversight Committee (EROC) reviews and provides guidance to staff on the timing and execution of the hedging strategy to meet procurement directives and minimize budget exposure.

CAISO Market Energy and Congestion Revenue Rights

CAISO Market Energy is scheduled for VCE daily into the Day Ahead Market, as required by the CAISO, based on daily forecasts of VCE hourly wholesale loads. SMUD staff currently purchase and sell energy on a daily basis to maintain balance between forecasted demand and supply. This practice will be evaluated based on actual benefits and risk tolerances to determine if the practice should be maintained or modified. The VCE EROC will assess evaluations and approve any changes to this practice along with the hedging strategy.

Congestion Revenue Rights (CRRs) are financial instruments allocated by the CAISO to Load Serving Entities for the purpose of hedging the cost of transmission congestion between generation sources and load. Although CRR portfolio management can be quite complex, with auction mechanisms involving multiple hubs on the system, this delegation allows VCE's portfolio manager to only nominate CRRs that are directly related to VCE's supply portfolio. VCE is restricted to participation in the allocation process that does not involve price bidding or speculation.

Portfolio Composition Approach

VCE's portfolio management strategy is evolving as it's portfolio matures. VCE has signed multiple long-term renewable PPAs, contributing to the renewable composition of the California grid. Renewable PPAs bring a level of uncertainty regarding construction completion and online dates, as well as annual output. Whereas VCE's early procurement actions focused primarily on firm volume deliveries from existing generation assets, VCE will be the off-taker of variable output resources under the long-term agreements. Once all PPA assets are online, VCE anticipates exceeding renewable targets set by the California RPS program. But the uncertainty during the transition to new resources complicates the achievement of internal portfolio targets. Irrespective, VCE is required to achieve the renewable target for the California RPS program compliance period and is on course to meet these minimum requirements. The upcoming RPS compliance period is 2021-2024.

Based on the Board's decisions at the January 2021 meeting on PG&E's carbon-free allocations

for calendar year 2021, these carbon-free allocations are expected to contribute to VCE’s carbon-free portfolio content in the form of large hydro resources paid for by VCE customers in the Power Charge Indifference Adjustment (PCIA). However, if the staff recommendation is approved, the exact volumes of these resources will not be certain until after the calendar year is complete.

Board Action on Portfolio Targets – June 2020

Based on VCE’s current financial outlook, in June 2020 the Board set minimum targets of 10% renewable, 20% carbon-free for 2021. VCE staff estimate that renewable PPAs could contribute 20% renewable composition in 2022, and allocations could result in a 30% carbon-free (overall) 2022 composition. Staff recommend that the Board not set specific renewable or carbon-free targets for 2022 at this time. Setting internal targets at this time could result in over-procurement if PPA resources come online earlier than expected. Therefore, staff believes it would be prudent for VCE to retain the flexibility to procure short-term renewable energy credits (RECs), to meet RPS compliance obligations if PPA power deliveries are delayed for any reason (e.g. supply chain disruptions). When VCE’s finances are reassessed on the next fiscal year cycle, 2022 portfolio targets could be added at that time. Based on these factors, staff is recommending flexibility to achieve compliance without imposing additional targets during the transitional year from short-term RECs to long-term PPAs.

Procurement Directives

Taking into account the considerations outlined in the sections above, Table 1 shows the specific Procurement Directives and Delegations recommended for 2021 - 2023.

Table 1. 2021-2023 Procurement Directives

Valley Clean Energy Power Procurement Directives and Delegations for Calendar 2021					
Product	For Year	Procurement Milestone Date	Cumulative Percentage Procured by Milestone Date	Delegated To	Notes
CAISO Market Energy					
CAISO Market Energy	2021	Daily	100%	SMUD	Procure Day Ahead and Imbalance Energy for 100% of VCE wholesale load.
Congestion Revenue Rights					
Congestion Revenue Rights	2021	Monthly During Year	Up to 100%	SMUD	Request monthly allocations, if economic, as approved by VCE AGM.
Congestion Revenue Rights	2022	October 31, 2021	Up to 100%	SMUD	Request annual and/or quarterly year ahead allocations, if economic, as approved by VCE AGM.
Price Hedging Energy					
Price Hedging Energy	2021	Daily/Balance of Month	TBD	SMUD	Daily hedging strategy to be revisited, contingent upon analysis of Daily and/or Balance of Month hedging efficacy, changes upon approval of EROC.
Price Hedging Energy	2022	December 31, 2021	100%	SMUD	Quantity and timing contingent upon review by the VCE EROC of forward market power prices/trends.

Product	For Year	Procurement Milestone Date	Cumulative Percentage Procured by Milestone Date	Delegated To	Notes
Renewable Energy					
Renewable Energy	2021	September 30, 2021	100%	SMUD	True up procurement based upon actual loads/updated load forecast.
Renewable Energy	2022	December 31, 2021	100%*	SMUD	Minimal short term renewable procurements anticipated, based upon expected long term renewable PPA deliveries. Once greater certainty regarding renewable online dates, procure short term PCC1 power as approved by GM.
Large Hydro Energy					
Large Hydro Energy	2021	July 1, 2021	100%	SMUD	100% of the forecast need for Large Hydro.
Large Hydro Energy	2022	December 31, 2021	up to 100%	SMUD	Up to 100% of the forecast need for Large Hydro, based upon pricing and availability, as approved by VCE GM. Only needed if VCE sets 2022 carbon-free portfolio target that exceeds expected PG&E allocation volume.
Resource Adequacy Capacity					
Resource Adequacy Capacity	2021	October 31, 2021	100%	SMUD	Procure for remaining monthly RA deficiencies and sell monthly RA surpluses, as approved by GM.
Resource Adequacy Capacity	2022	October 31, 2021	100%	SMUD	All RA products forecast, including some provision for RA from possible CEC Load Forecast adjustments or Local RA obligation increases, required to achieve compliance by October 31, 2021 for 2022. Procurement amount may exceed 100% in total for year to insure that all months achieve at least 100% compliance.
Resource Adequacy Capacity	2023	October 31, 2021	Up to 100%	SMUD	Including RA anticipated from the long term renewables under contract, but excluding possible RA from CEC load forecast adjustments, upon approval of GM. Whether to proceed based upon decision of VCE EROC and in consideration of CPUC requirement for multi-year procurement and VCE strategy related to 2023 Central Procurement Entity transition.
<i>Note: Procurement milestone dates represent targets but do not represent expiration of SMUD delegation. Where necessary to achieve compliance, procurement is approved under this delegation until the next calendar year delegation is approved by the Board of Directors.</i>					

REQUESTED ACTION

Adopt a resolution approving:

1. The 2021 Procurement Plan.
2. Directives and delegations to SMUD for procuring portions of VCE's power portfolio for calendar year 2021 through 2023.
3. The elimination of specific portfolio renewable and carbon-free targets in 2022 to improve procurement and financial flexibility as long-term renewable projects come online.

ATTACHMENT: Resolution 2021 Procurement Plan

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021-___

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE
APPROVING THE UPDATES TO THE 2021 PROCUREMENT PLAN, DIRECTIVES AND
DELEGATIONS FOR PROCURING PORTIONS OF VALLEY CLEAN ENERGY'S POWER
PORTFOLIO FOR CALENDAR YEAR 2021 THROUGH 2023 AND THE ELIMINATION OF
SPECIFIC PORTFOLIO RENEWABLE AND CARBON-FREE TARGETS IN 2022**

WHEREAS, in order to achieve its strategic goals, VCE has established procurement policies and goals and on January 18, 2018 the Board approved VCE's Procurement Guide which provided the roadmap for implementation and established the procurement plan for 2018 and 2019 power portfolio, along with delegations to Sacramento Municipal Utilities District ("SMUD") to execute on this plan;

WHEREAS, on January 23, 2019, the Board adopted via Resolution 2019-002 a revised Procurement Guide and delegated authority to VCEA Staff and SMUD to procure energy for calendar years 2020, 2021 and 2022, including the procurement of price hedging energy for VCE's expected 2020 needs with no delegation to procure hedging energy beyond 2020, consistent with the procurement policy and guide;

WHEREAS, on September 12, 2019, the Board adopted via Resolution 2019-013 the replacement of the August 29, 2019 EROC delegation, authorized SMUD to procure up to 100% of the forecast hedging energy needs for 2021, and authorized the Interim General Manager to approve the actual procurement strategy employed for this procurement;

WHEREAS, on December 12, 2019, the Board adopted Resolution 2019-018 approving the 2020 Procurement Plan, directives and delegations for procuring VCE's power portfolio for calendar year 2021, the targeted portfolio mix, and the maintenance of minimum renewable target for 2021;

WHEREAS, at the Board's June 11, 2020 meeting, policy strategies were adopted to plan for incorporation of long-term renewable contracts into VCE's portfolio, to address fiscal year 2020/2021 Power Charge Indifference Adjustment (PCIA) and Resource Adequacy (RA) cost impacts;

WHEREAS, at the Board's July 9, 2020 meeting, the 2020 Procurement Plan was updated to incorporate policy strategies adopted at the Board's June 11, 2020 meeting approving specific directives and delegations to SMUD for procuring power for calendar year 2021 and portions of the

power portfolio for 2022, and updated 2021 portfolio mix targets of 10% renewable and up to 10% large hydro, as needed to achieve 20% carbon-free power content; and

WHEREAS, VCE’s Procurement Plan needs to be updated for 2021 to include directives and delegations for 2021 through 2023 power portfolio and specific portfolio renewable and carbon-free targets in 2022.

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

1. Approves the 2021 Procurement Plan contained in this staff report.
2. Approves Directives and Delegations to SMUD for procuring portions of VCE’s power portfolio for calendar year 2021 through 2023, guided by the principals described in this report.
3. Approves the elimination of specific portfolio renewable and carbon-free targets in 2022 to improve procurement and financial flexibility as long-term renewable projects come online.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Carson, VCE Chair

Alisa M. Lembke, VCE Board Secretary