



**Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, October 14, 2021 at 5:00 p.m.
Via Video/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 video/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 video/teleconferencing call-in number and meeting ID code. Video/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/88048592205>

Meeting ID: 880 4859 2205

- b. By phone**

One tap mobile:

+1-669-900-9128,, 88048592205# US

+1-346-248-7799,, 88048592205# US

Dial:

+1-669-900-9128 US

+1-346-248-7799 US

Meeting ID: 880 4859 2205

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)

5:00 p.m. Call to Order

1. **Welcome**
2. **Approval of Agenda**
3. **Authorize continuation of remote public meetings as authorized by Assembly Bill 361.**
4. **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 or are listed on the Consent portion of the 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

5. **Approve September 9, 2021 Board meeting Minutes.**
6. **Receive 2021 Long Range Calendar.**
7. **Receive Financial Update – August 31, 2021 (unaudited) financial statement.**
8. **Receive Legislative update.**
9. **Receive October 7, 2021 Regulatory update provided by Keyes & Fox.**
10. **Receive October 6, 2021 Customer Enrollment update.**
11. **Receive Community Advisory Committee September 23, 2021 meeting summary.**
12. **Receive Customer Dividend and Programs Allocation Report.**

REGULAR AGENDA

13. **Consider entering into a Power Purchase Agreement for renewable energy and capacity between Valley Clean Energy and Willow Springs Solar 3, LLC to procure a 72 MW solar photovoltaic facility coupled with a 36 MW/144 MWh (4-hour) lithium-ion battery energy storage system, under development by Leeward Renewable Energy near the city of Rosamond in Kern County, California.**
14. **Review draft Cost-Recovery based Customer Rate Structure.**
15. **Approve Community Advisory Committee At-Large Recruitment and Selection Guidelines and appointment to fill one At-Large seat.**
16. **Receive report on concept to align VCE's Fiscal Year with the Calendar Year.**
17. **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.
18. **Adjournment:** The regular meeting scheduled for Thursday, November 11, 2021 is a holiday (Veteran's Day) and has been cancelled. A special Board meeting has been scheduled for Wednesday, November 10, 2021 at 5:00 p.m.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS MEETING ON THURSDAY, OCTOBER 14, 2021 AT 5:00 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. When called upon, please press *6 to unmute your microphone.

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 3

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Continuation of Remote Public Meetings as authorized by Assembly Bill 361

DATE: October 14, 2021

Recommendation

VCE Board authorizes the continuation of remote (video/teleconference) meetings, including any standing or future committee(s) meetings and Community Advisory Committee meetings, by finding:

1. Pursuant to Assembly Bill 361 (AB 361), that, as a result of the COVID pandemic, there is a proclaimed state of emergency and a local official has recommended measures to promote social distancing.
2. On July 29, 2021, the County Health Officer issued the attached Amended Order for Wearing of Face Coverings in Workplaces and Public Settings. Page 3, Section 7 of the Amended Order states that all persons should wear well-fitted face coverings and practice physical distancing. Further, on September 22, 2021, the Health Officer issued the attached memorandum, recommending that all Brown Act bodies continue to meet remotely.

Background/Summary of AB 361

Pursuant to Government Code Section 54953(b)(3) legislative bodies may meet by “teleconference” only if the agenda lists each location a member remotely accesses a meeting from, the agenda is posted at all remote locations, and the public may access any of the remote locations. Additionally, a quorum of the legislative body must be within the legislative body’s jurisdiction.

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body’s jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021, the Governor signed AB 361, which kept some of the provisions of Executive Order N-29-20. Pursuant to Government Code Section 54953(e), legislative bodies may meet remotely and do not need to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location.

However, legislative bodies must first find: (1) the legislative body is meeting during a state of emergency and determine by majority vote that meeting in person would present an imminent risk to the health or safety of attendees; or (2) state or local health officials impose or recommend social distancing measures.

Government Code Section 54953(e)(1). The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing. Government Code Section 54953(e)(3). On January 1, 2024, Government Code Section 54953(e) is repealed.

Due to the rise in COVID-19 cases caused by the Delta Variant, on July 29, 2021, the Yolo County Health Officer issued an Amended Order for the Wearing of Face Coverings in Workplaces and Public Settings a recommendation that all Brown Act bodies meet remotely. The Amended Order requires the use of face coverings indoors and states that all persons should continue to protect themselves and others by physical distancing (see Page 3, Section 7). Further, on September 22, 2021, the Health Officer issued a memorandum to the Yolo County Board of Supervisors recommending that all Brown Act bodies continue to meet remotely.

Staff will continue to monitor the situation as part of our emergency operations efforts and will return to the Board every thirty (30) days or as needed with additional recommendations related to the conduct of public meetings.

Attachments:

1. Amended Order of the Yolo County Public Health Officer for wearing face coverings in workplaces and public settings
2. Yolo County Health Officer memorandum dated 9/22/21 to Board of Supervisors

AMENDED ORDER OF THE YOLO COUNTY PUBLIC HEALTH OFFICER FOR THE WEARING OF FACE COVERINGS IN WORKPLACES AND PUBLIC SETTINGS

DATE OF AMENDED ORDER: July 29, 2021

Please read this Order carefully. Violation of, or failure to comply with, this Order is a public nuisance subject to citation, abatement, or both, as well as a misdemeanor punishable by fine, imprisonment, or both (California Government Code § 8634 and 8665; California Health and Safety Code §§ 120155, 120220, 120275, 120295; California Penal Code § 69, 148(a)(1)); Executive Order N-25-20).

SUMMARY OF THIS ORDER

This Amended Order requires all individuals to wear face coverings when indoors in workplaces and public settings, with limited exemptions, and recommends that businesses make face coverings available to individuals entering the business.

On July 29, 2021, this Order was amended to clarify the settings in which it applies.

BACKGROUND

Since June 15, 2021 when most restrictions from the State of California’s Blueprint for a Safer Economy were lifted, the average daily incident case rate of COVID-19 in Yolo County has increased eightfold to reach the “Substantial Transmission” level of the US Centers for Disease Control and Prevention’s (“CDC”) Indicators for Levels of Community Transmission. The testing positivity rate in Yolo County has also risen tenfold since June 15. Hospitalizations from COVID-19 in Yolo County have risen from one patient on June 15 to 15 patients on July 23. While the majority of cases since June 15 have occurred among unvaccinated persons, the daily case rate among vaccinated persons has risen to reach the CDC’s “Moderate Transmission” level, meaning that the risk of infection is not longer considered low in fully vaccinated persons.

The significantly more transmissible Delta variant of the SARS-CoV-2 virus has become the predominant strain in the US and in Yolo County. During the week of July 17 through July 25, 2021, 88 percent of positive specimens genotyped by the UC Davis Genome Center were identified as the Delta variant. The COVID-19 vaccines currently authorized in the US have been shown to be highly safe and effective at providing protection to individuals and communities, particularly against severe COVID-19 disease and death, and are recommended by the CDC for all populations for whom the vaccine is authorized by the US Food and Drug Administration.

In considering options to stem this rapid increase in COVID-19 transmission, a continued increase in the proportion of the population vaccinated is necessary but not sufficient. Universal indoor use of face coverings, also known as masking, is the least disruptive and most immediately impactful additional measure to take. All individuals, especially those who are unvaccinated or at higher risk of severe outcomes from COVID-19, should take personal measures to reduce risk in addition to masking.

This Order is necessary to control and reduce the rate of community spread and to reinforce the need for safe interactions. The Health Officer will continue to assess the public

health situation as it evolves and may modify this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.

ORDER

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, 120175, AND 120220, THE PUBLIC HEALTH OFFICER OF THE COUNTY OF YOLO (“HEALTH OFFICER”) HEREBY ORDERS AS FOLLOWS:

1. Except as otherwise set forth herein, the July 28, 2021 [Guidance for the Use of Face Coverings](#) issued by the California Department of Public Health (“CDPH”), as may be amended from time to time, continues to apply throughout the County.

2. This Order directs that face coverings shall be worn, regardless of vaccination status, over the mouth and nose, in all indoor public settings, venues, gatherings, and workplaces, such as, but not limited to: offices, retail stores, restaurants and bars, theaters, family entertainment centers, conference centers, and State and local government offices. For purposes of this Order, all non-residential settings are considered public, and common areas within apartments and other multi-household residential settings (e.g., common patios, laundry rooms, lobbies) are also considered public.

3. Individuals, businesses, venue operators, hosts, and others responsible for the operation of indoor public settings must:

- Require all patrons to wear face coverings for all indoor settings, regardless of their vaccination status; and
- Post clearly visible and easy-to-read signage at all entry points for indoor settings to communicate the masking requirements to all patrons.

In addition, those responsible for indoor public settings are strongly encouraged to provide face coverings at no cost to individuals required to wear them.

4. Exemptions from face covering requirements – Individuals are not required to wear face coverings in the following circumstances:

- Persons who are working alone in a closed office or room;
- Persons who are actively eating and/or drinking;
- Persons swimming or showering in a fitness facility;
- Persons who are obtaining a medical or cosmetic service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
- Persons who are specifically exempted from wearing face masks pursuant to other CDPH guidance.

5. Employers and businesses subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (“ETS”) and/or the Cal/OSHA Aerosol Transmissible Diseases Standards should consult the applicable regulations for additional requirements. The ETS allow local health jurisdictions to mandate more protective measures. This Order, which requires face

coverings for all individuals in indoor settings and businesses, regardless of vaccination status, takes precedence over the more permissive ETS regarding employee face coverings.

6. Mega Events:

- Indoor Mega-Events: All attendees of indoor mega-events (defined as 5,000 or more attendees) must wear face coverings while indoors and must otherwise comply with the restrictions set forth in the CDPH guidance [Beyond the Blueprint for Industries and Sectors](#).
- Outdoor Mega-Events: Attendees of outdoor mega-events (defined as 10,000 or more attendees) are required to wear face coverings while in an indoor setting and in areas where 50% of the structure has adjacent impermeable walls, such as concourses and concession stands, and must otherwise comply with the restrictions set forth in the CDPH guidance [Beyond the Blueprint for Industries and Sectors](#).

7. Unvaccinated as well as fully vaccinated persons should continue to follow CDC guidance for [unvaccinated people](#) and for [fully vaccinated people](#) to protect themselves and others, including wearing a well-fitted [face covering](#), [physical distancing](#) (at least 6 feet), avoiding crowds, avoiding poorly ventilated spaces, covering coughs and sneezes, [washing hands](#) often, and following any applicable workplace, school, or business sector guidance or requirements including the [Cal/OSHA Emergency Temporary Standards](#). Fully vaccinated people should still watch for [symptoms](#) of COVID-19, especially following an exposure to someone with suspected or confirmed COVID-19. If symptoms develop, all people – regardless of vaccination status – should isolate and be clinically evaluated for COVID-19, including SARS-CoV-2 testing. Anyone testing positive for SARS-CoV-2, regardless of vaccination status, must follow the [Mass Isolation Order of the Yolo County Health Officer](#).

8. This Order shall become effective at 12:01 am on July 30, 2021 and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Health Officer. The Health Officer intends to end the Order when the daily COVID-19 case rate falls below 2 per 100,000 for seven consecutive days.

9. All State orders and guidance documents referenced in State orders are complementary to this Order. By way of this Order, the Health Officer adopts such directives as orders as well. Where a conflict exists between a local order and any State public health order related to the COVID-19 pandemic, the most restrictive provision controls pursuant to, and consistent with, California Health and Safety Code § 131080, unless the State Health Officer issues an order that expressly determines a provision of a local public health order is a menace to public health.

10. Pursuant to Government Code §§ 26602 and 41601 and Health and Safety Code § 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. **The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and pursuant to Section 120275 of the Health & Safety Code is punishable as a**

misdemeanor by fine, imprisonment, or both. Other administrative and judicial remedies are also available.

11. Copies of this Order shall promptly be: (1) made available at the County Administration Building at 625 Court Street, Woodland, CA 95695; (2) posted on the County website (www.yolocounty.org); and (3) provided to any member of the public requesting a copy of this Order.

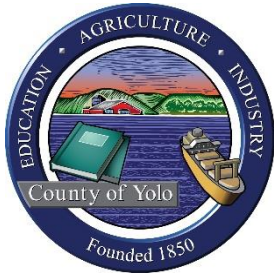
12. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:



Aimee Sisson, MD, MPH
Health Officer of the County of Yolo

Dated: July 29, 2021



COUNTY OF YOLO

Health and Human Services Agency

Karen Larsen, LMFT
Director

Aimee Sisson, MD, MPH
Health Officer

MAILING ADDRESS
137 N. Cottonwood Street • Woodland, CA 95695
www.yolocounty.org

Date: September 22, 2021

To: All Yolo County Boards and Commissions

From: Dr. Aimee Sisson, Health Officer

Subject: Remote Public Meetings

In light of the ongoing public health emergency related to COVID-19 and the high level of community transmission of the virus that causes COVID-19, the Yolo County Public Health Officer recommends that public bodies continue to meet remotely to the extent possible. Board and Commissions can utilize the provisions of newly-enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws.

Among other reasons, the grounds for the remote meeting recommendation include:

- The continued threat of COVID-19 to the community. As of September 22, 2021, the current case rate is 24.1 cases per 100,000 residents per day. This case rate is considered “high” under the Centers for Disease Control and Prevention’s (CDC) framework for assessing community COVID-19 transmission; and
- The unique characteristics of public governmental meetings, including the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges of ensuring compliance with safety requirements and recommendations at such meetings.

Meetings that cannot feasibly be held virtually should be held outdoors when possible, or indoors only in small groups with face coverings, maximal physical distance between participants, use of a portable HEPA filter (unless comparable filtration is provided through facility HVAC systems), and shortened meeting times.

This recommendation is based upon current conditions and available protective measures. The Public Health Officer will continue to evaluate this recommendation on an ongoing basis and will communicate when there is no longer such a recommendation with respect to meetings for public bodies.

Davis

600 A Street
Davis, CA 95616
Mental Health (530) 757-5530

West Sacramento

500 Jefferson Boulevard
West Sacramento, CA 95605
Service Center (916) 375-6200
Mental Health (916) 375-6350
Public Health (916) 375-6380

Winters

111 East Grant Avenue
Winters, CA 95694
Service Center (530) 406-4444

Woodland

25 & 137 N. Cottonwood Street
Woodland, CA 95695
Service Center (530) 661-2750
Mental Health (530) 666-8630
Public Health (530) 666-8645

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 5

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from September 9, 2021 Board Meeting
DATE: October 14, 2021

RECOMMENDATION

Receive, review and approve the attached September 9, 2021 Board meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, SEPTEMBER 9, 2021**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, September 9, 2021 at 5:00 p.m., to be held via Zoom webinar. Chair Dan Carson established that there was a quorum present and began the meeting at 5:03 p.m.

Board Members Present: Dan Carson, Tom Stallard, Don Saylor, Gary Sandy, Wade Cowan, Lucas Frerichs, Mayra Vega (*arrived at 5:25 p.m.)

Members Absent: Jesse Loren

Welcome Chair Carson welcomed everyone.

Approval of Regular Meeting Agenda Motion made by Director Don Saylor to approve the September 9, 2021 meeting agenda, seconded by Director Lucas Frerichs. Motion passed with Directors Jesse Loren and Mayra Vega absent.

Public Comment – General and Consent Chair Carson opened the floor for public comment for items not listed on the agenda and items listed on the Consent Agenda. Board Clerk informed those present that there were no verbal or written comments.

Approval of Consent Agenda (Resolution 2021-019) Chair Carson commented that the November 11th regular Board meeting is a holiday and needs to be rescheduled and that the status of some of the bills reported in the legislative update provided by Pacific Policy Group. Motion made by Director Saylor to approve the consent agenda, seconded by Director Frerichs. Motion passed with Directors Loren and Vega absent.

The following items were approved, ratified, and/or received:

4. July 8, 2021 Board meeting Minutes;
5. 2021 Long Range Calendar;
6. Financial Updated – a) June 30, 2021 and B) July 31, 2021 (unaudited) financial statements;
7. Legislative Update from Pacific Policy Group;
8. September 3, 2021 Regulatory update provided by Keyes & Fox;
9. September 1, 2021 Customer Enrollment Update;
10. Community Advisory Committee July 22, 2021 and August 26, 2021 meeting summaries;
11. (ratified) Amendment 25 to SMUD professional services agreement Task Orders 2, 3 and 4 for annual Consumer Price Index based increase for Compensation for Services;



12. (approved) Second Amendment to VCE’s marketing consultant agreement with Green Ideals to extend the contract one (1) year and increase the not to exceed amount by \$200,000 as Resolution 2021-019;
13. SACOG Grant – Electrify Yolo Project update;
14. (ratify) execution of waiver of potential legal conflicts letter for VCE’s legal counsel Richards, Watson & Gershon; and,
15. accepted and attested the accuracy of VCE’s 2020 Power Content Label for the Standard Green and UltraGreen products.

Item 16: Receive Operating Budget update. (Informational)

Chair Carson announced that this operating budget update item is closely related to the next item, customer rate schedule. Interim Mitch Sears introduced this item. VCE Staff Edward Burnham reviewed slides summarizing the Staff Report within the Board’s packet.

Mr. Burnham informed those present that Staff will continue to monitor the operating budget and financial cash reserves; refine multi-year forecast updates and fiscal impacts mitigation; and, rates strategies. Staff will provide quarterly updates to the Board and Community Advisory Committee (CAC).

The Board asked questions and several topics were discussed, such as: communications with River City Bank, forecasting power charge indifference adjustment (PCIA) fees and budget forecasting, and variants in forecasting.

Director Mayra Vega arrived at 5:25 p.m.

Verbal public comment: Christine Shewmaker commented that VCE should assume that climate change (heat) contributed to VCE’s \$2.4 million loss. She suggested that VCE use 2020 and 2021 load moving forward in forecasting. She also asked the question of whether it is cheaper to buy power now rather than buying power when needed and at higher prices on the open market.

There were no written public comments.

Item 17: Receive report and provide direction on a concept for an expanded and cost-recovery based customer rate structure.

Mr. Sears introduced this item and reviewed slides summarizing the Staff Report within the Board’s packet.

The Board asked questions and several topics were discussed, such as: PCIA - is there a cap and is there a way to forecast; clear messaging to customers about their bills; how will increased rates effect the customer; CCA economies of scale; and, program partnerships.



(Informational/Discussion)

Verbal public comment: Christine Shewmaker, as the Chair, informed those present that the CAC has not seen the budget numbers or rate structure presentation, but will see this information at their September meeting. All solutions should be considered when looking at rates.

The Board asked Staff to explore a cost recovery-based rate structure and come back to the Board with a report that includes modeling, baseline, optimistic and pessimistic scenarios, a low-cost option, messaging timeline, and, information from other CCAs who have adopted a cost recovery-based rate structure on what customer groups opted out or down. The Board reiterated VCE's goal of financial success through funding of programs, increased reserves, and reduced generation rates.

There were no written public comments.

Item 19: Receive Bi-annual Enterprise Risk Management Report.
(Informational)

Due to time constraints, Chair Carson addressed Item 19 prior to Item 18. Director Tom Stallard made a motion to receive the Bi-annual Energy Risk Management Report, seconded by Director Don Saylor. Motion passed with Director Loren absent.

There were no written or verbal public comments.

Item 18: Receive progress update on the VCE carbon neutrality study – Strategic Plan Goal Implementation.
(Informational)

Mr. Sears introduced this item. VCE Staff Gordon Samuel reviewed the status of the carbon neutrality study. Mr. Samuel introduced Maggie Riley of Energeia USA. Ms. Riley provided an overview and timeline of the study.

There were no written or verbal public comments.

Item 20: Discussion of the Community Advisory Committee structure.
(Discussion)

Mr. Sears introduced this item and provided a summary of the Staff Report. Mr. Sears reminded those present that the current CAC structure consists of 12 members [3 seats for each jurisdiction - there are four (4) jurisdictions] and there are eight (8) seats filled with Members whose appointments have not expired. Staff are seeking feedback and direction from the Board on the structure of the CAC. Board direction will help Staff and the CAC develop a recommendation for future Board consideration.

Verbal public comments:

Mark Aulman, CAC Member, commented that it is important to have equal representation on the CAC and to have competent, motivated individuals who have the bandwidth to participate and provide input.



Yvonne Hunter, CAC Member, commented that as VCE has matured, at large members who provide technical or specific expertise should be considered as long as one jurisdiction does not have a majority representation on the CAC.

Christine Shewmaker, CAC Chair, read portions of Board Item 10 – CAC meeting summaries, specifically the CAC’s discussion on this matter at their August 26, 2021 meeting. As the CAC Chair, she would like to see the seats filled as currently there are twelve (12) seats, and a quorum is seven (7).

Chair Carson sought input from the other Board Members. Input was provided by those Board Members present.

Chair Carson made a motion to:

- Compose the Community Advisory Committee of eight (8) seats consisting of two seats from each jurisdiction and three (3) “at large” seats, for a total of 11 seats, with the current eight (8) members continue to serve and fill the seats until the completion of their terms;
- it is the Board’s intention to create three (3) “technical” or “at large” seats, with the “at large” category to be broadly defined to include, but not limited to, areas of expertise, represent the service territory effectively, and with a strong interest in the way VCE operates;
- have Interim General Manager come back to the Board at the next meeting or two, to present recommended categories of expertise for at large members, recommend candidates to fill the at large seats and/or a process to recruit for suitable candidates; and/or recommend selecting candidates for the three at large seats;
- abide by the quorum requirements of a Community Advisory Committee; and,
- with a total of 11 seats (8 plus 3 “at large”) the quorum would be 6.

Director Tom Stallard second the motion. The Board continued to discuss and input on defining the “at large” category was provided by the members.

Inder Khalsa, legal counsel, informed those present that per the JPA, power is given to the Board to create commissions, committees and those commissions and committees must abide by the Brown Act. Therefore, the CAC must abide by quorum requirements.

Mr. Sears requested clarification on whether or not two vacant seats, of which there are applicants, representing the Cities of Davis and Winters, are included in his motion. Chair Carson said that filling these two seats is not



included but that the applicants could be suitable candidates for the “at large” seats.

Additional verbal public comment: Christine Shewmaker, CAC Chair, reiterated that the CAC is functioning with nine (9) participants, with the third Davis seat filled by a person who functions as the Chair of the Rates Task Group and is also an integral member of the Carbon Neutral Task Group. As she currently understands the motion, we would lose this valuable member.

There were no written public comments.

There being no further discussion, Chair Carson amended his motion to include: that the existing CAC membership remain until Interim General Manager returns to the Board with a process and/or recommendation regarding the three (3) “at large” seats and appointments are made by the Board to these “at large” seats.

Director Stallard agreed to the amended motion. Motion passed by the following vote:

AYES: Carson, Saylor, Stallard, Cowan, Frerichs, Sandy, Vega

NOES: None

ABSENT: Loren

ABSTAIN: None

Item 21: Board Member and Staff Announcements

Mr. Sears informed those present that the legislative session is ending; Staff continue to track “remote meeting” legislation related to Executive Orders that suspended certain provisions of the Brown Act; the agricultural response proposal was submitted; and, comments were submitted on PG&E’s regionalization efforts. There were no announcements from the Board Members.

The Board’s next regular meeting is scheduled for October 14, 2021 at 5 p.m.

Adjournment

Chair Carson adjourned the regular Board meeting at 7:34 p.m.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 6

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Board and Community Advisory Committee 2021 Long-Range Calendar

DATE: October 14, 2021

Recommendation

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

Please note that the regular Board meeting scheduled for *Thursday, November 11th is a holiday and has been cancelled*. A special meeting has been scheduled for Wednesday, November 10, 2021 at 5 p.m. via video/teleconference.

VALLEY CLEAN ENERGY

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

| MEETING DATE | | TOPICS | ACTION |
|--|---------------------------------------|--|---|
| January 14, 2021 Special Meeting January 21, 2021 | Board WOODLAND | <ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual if new Members) • Approve Updated CAC Charge (Annual) • Approve 2021 Procurement Plan • Treasurer Function / Investment • GHG Free Attributes • Power Purchase Agreement • Arrearage Management Plan | <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 (Annual) • Quarterly Power Procurement / Renewable Portfolio Standard Update • Quarterly Strategic Plan update • New Building Electrification • 2021 Marketing Outreach Plan • CA Community Power Agency Joint Powers Authority | <ul style="list-style-type: none"> • Discussion/Action • Informational • Informational • Informational/Discussion • Action: Recommendation to Board • Action: Recommendation to Board |
| February 11, 2021 | Board DAVIS | <ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 2021 Marketing Outreach Plan • CA Community Power Agency Joint Powers Authority • Update on January 2021 Rates • Update on Time of Use (TOU) roll out | <ul style="list-style-type: none"> • Informational • Action • Discussion/Action • Informational • Informational |
| February 25, 2021 | Advisory Committee DAVIS | <ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 2021 Task Groups – Tasks/Charge (Annual) • New Building Electrification • Legislative Bills • Update on Time of Use (TOU) roll out | <ul style="list-style-type: none"> • Informational • Discussion/Action • Discussion/Action • Discussion/Action • Informational |

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|----------------|---------------------------------------|--|--|
| March 11, 2021 | Board WOODLAND | <ul style="list-style-type: none"> • New Building Electrification • Legislative Bills | <ul style="list-style-type: none"> • Discussion/Action • Action |
| March 25, 2021 | Advisory Committee WOODLAND | <ul style="list-style-type: none"> • Draft Programs Plan | <ul style="list-style-type: none"> • Discussion |
| April 8, 2021 | Board DAVIS | <ul style="list-style-type: none"> • Preliminary FY21/22 Operating Budget (Annual) | <ul style="list-style-type: none"> • Informational/Discussion |
| April 22, 2021 | Advisory Committee DAVIS | <ul style="list-style-type: none"> • 2021 and 2022 Power Content Update • Quarterly Strategic Plan update • SMUD 2030 Zero Carbon Plan - presentation • AB 992 (Social Media)/Brown Act - Best Best Krieger presentation • Update on SACOG Grant – Electrify Yolo | <ul style="list-style-type: none"> • Informational • Informational • Informational • Informational/Discussion • Informational |
| May 13, 2021 | Board WINTERS | <ul style="list-style-type: none"> • Update on FY21/22 draft Operating Budget • Update on SACOG Grant – Electrify Yolo • Amendments 22 and 23 to SMUD Agreement Task Order 2 • Execution of Letter Re: SMUD, Resource Adequacy to the Central Procurement District | <ul style="list-style-type: none"> • Informational • Informational • Action • Action |
| May 27, 2021 | Advisory Committee WOODLAND | <ul style="list-style-type: none"> • Power Planning 2022 / Renewable Content • Draft 3-Year Programs Plan | <ul style="list-style-type: none"> • Discussion/Action • Action: Recommendation to the Board |
| June 10, 2021 | Board DAVIS | <ul style="list-style-type: none"> • Approval of FY21/22 Operating Budget (Annual) • Extension of Waiver of Opt-Out Fees for one year (Annual) • Amendment 22 SMUD Agreement Task Order 2 • Draft 3-Year Programs Plan | <ul style="list-style-type: none"> • Action • Action • Action • Action |
| June 24, 2021 | Advisory Committee DAVIS | <ul style="list-style-type: none"> • Prioritizing types of energy (placeholder) • Net Energy Metering (NEM) 3.0 Update | <ul style="list-style-type: none"> • Discussion/Action • Informational |
| July 8, 2021 | Board WOODLAND | <ul style="list-style-type: none"> • Re/Appointment of Members to Community Advisory Committee (Annual) (postponed to September meeting) • Net Energy Metering (NEM) 3.0 Update | <ul style="list-style-type: none"> • Action • Informational |

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| July 22, 2021 | Advisory Committee WOODLAND | <ul style="list-style-type: none"> Quarterly Power Procurement / Renewable Portfolio Standard update Quarterly Strategic Plan update Legislative Bills update Rates Task Group report/update | <ul style="list-style-type: none"> Informational Informational Informational Informational |
| August 12, 2021 | Board DAVIS | Currently, this meeting is cancelled. A special meeting will be scheduled if an urgent item needs to be addressed. | |
| August 26, 2021 | Advisory Committee DAVIS | <ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo (consent) Carbon Neutral Task Group report/update Remote meeting update CAC Structure discussion | <ul style="list-style-type: none"> Informational Informational Informational Discussion/Action |
| September 9, 2021 | Board WOODLAND | <ul style="list-style-type: none"> Re/Appointment of Members to Community Advisory Committee (Annual) Receive Enterprise Risk Management Report (Bi-annual) Update on SACOG Grant – Electrify Yolo FY21/22 Operating Budget / RPS update Strategic Plan update (Carbon Neutrality) (placeholder) Certification of Standard and UltraGreen Products (Annual) | <ul style="list-style-type: none"> Action Informational Informational Informational /Discussion Informational Action |
| September 23, 2021 | Advisory Committee WOODLAND | <ul style="list-style-type: none"> Outreach Task Group report/update Legislative End of Session Update Update on FY2020/2021 Allocation of Net Margin (Consent) FY21/22 Operating Budget // Draft Customer Rate/Policy Structure | <ul style="list-style-type: none"> Informational Informational Informational Discussion / Action |
| October 14, 2021 | Board WINTERS | <ul style="list-style-type: none"> Draft Customer Rate/Policy Structure Customer Dividend and Programs Allocation report (Consent) CAC Restructuring and appointments | <ul style="list-style-type: none"> Discussion/Action Informational Action |
| October 28, 2021 | Advisory Committee DAVIS | <ul style="list-style-type: none"> Update on Power Content Label Customer Mailer Review Draft Committee Evaluation of Calendar Year End (Annual) Quarterly Strategic Plan update Resiliency overview/introduction (placeholder) Presentment of program concept(s) (placeholder) | <ul style="list-style-type: none"> Informational Informational / Discussion Discussion Informational Informational |

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|---|--|---|--|
| | | <ul style="list-style-type: none"> Final Draft Customer Rate/Policy Structure | <ul style="list-style-type: none"> Action: Recommendation to the Board |
| Special Meeting: Wednesday, November 10, 2021 | Board WOODLAND | <ul style="list-style-type: none"> Approval of FY20/21 Audited Financial Statements (James Marta & Co.) (Annual) Final Draft Customer Rate/Policy Structure Certification of Power Content Label (Annual) Update on SACOG Grant – Electrify Yolo | <ul style="list-style-type: none"> Action Action Action Informational |
| November 18, 2021 (3rd Thursday of the month due to Thanksgiving holiday) | Advisory Committee WOODLAND | <ul style="list-style-type: none"> Finalize Committee Evaluation of Calendar Year End (Annual) Review Revised Procurement Guide (Annual) FY21/22 Operating Budget / RPS update Quarterly Power Procurement / Renewable Portfolio Standard Update Update on Customer Rate/Policy Structure Update on SACOG Grant – Electrify Yolo Review CAC Charge (Annual) Carbon Neutral Task Group report/update (placeholder) | <ul style="list-style-type: none"> Discussion/Action Action: Recommendation to Board Informational Informational Informational Informational Discussion / Action Informational |
| December 9, 2021 | Board DAVIS | <ul style="list-style-type: none"> Receive Enterprise Risk Management Report (Bi-annual) Approve Revised Procurement Guide (Annual) FY21/22 Operating Budget / RPS update Receive CAC 2021 Calendar Year End Report (Annual) Election of Officers for 2022 (Annual) | <ul style="list-style-type: none"> Informational Action Informational Receive Nominations |
| December 16, 2021 (3rd Thursday of the month due to Christmas holiday) | Advisory Committee DAVIS | <ul style="list-style-type: none"> 2022 CAC Task Group(s) formation (Annual) Election of Officers for 2022 (Annual) Revise CAC Charge (tentative) (Annual) | <ul style="list-style-type: none"> Discussion/Action Nominations Discussion |
| January 13, 2022 | Board WOODLAND | <ul style="list-style-type: none"> Oaths of Office for Board Members (Annual if new Members) Approve Updated CAC Charge (tentative) (Annual) Update on Customer Rate/Policy Structure Implementation | <ul style="list-style-type: none"> Action Action Informational |
| January 27, 2022 | Advisory Committee WOODLAND | <ul style="list-style-type: none"> Update on Customer Rate/Policy Structure Implementation Quarterly Power Procurement / Renewable Portfolio Standard Update Quarterly Strategic Plan update | <ul style="list-style-type: none"> Informational Informational |

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|--|--|--|---|
| | | | <ul style="list-style-type: none">• Informational |
|--|--|--|---|

Note: CalCCA Annual Meeting 11/29, 11/30 and 12/1 in San Jose (in person and virtual)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Edward Burnham, Finance and Operations Director

SUBJECT: Financial Update – August 31, 2021 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending August 31, 2021

DATE: October 14, 2021

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of August 1, 2021 to August 31, 2021 (with comparative year to date information) and Actual vs. Budget year to date ending August 31, 2021.

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 August 31, 2021.

Financial Statements for the period August 1, 2021 – August 31, 2021

In the Statement of Net Position, VCEA as of August 31, 2021 has a total of \$7,544,213 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account and \$2,206,986 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and owes as of August 31, 2021, \$34,092. VCEA member obligations are incurred monthly due to staffing, accounting and legal services.

The term loan with River City Bank includes a current portion of \$1,284,800. On August 31, 2021, VCE's net position is \$12,810,238.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$7,002,088 of revenue (net of allowance for doubtful accounts) of which \$6,431,033 was billed in August and (\$3,194,512) represent estimated unbilled revenue. The cost of the electricity for the August revenue totaled \$6,676,655. For August, VCEA's gross margin is approximately 1.72%, and operating loss totaled (\$120,542). The year-to-date change in net position was (\$270,988).

In the Statement of Cash Flows, VCEA cash flows from operations was (204,551) due to August cash receipts of revenues being lower than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending August 31, 2021

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

- Electric Revenue - \$2,295,895 and 20% – variance is due to load being more favorable year-to-date than planned; the continued COVID and recessionary impacts and the weather has been warmer than forecast.
- Purchased Power - \$1,338,210 and 11% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts and the weather has been warmer than forecast.
- SMUD Credit Support - \$60,189 and 72% – variance is due to higher load and forward market pricing than budgeted.

Attachments:

- 1) Financial Statements (Unaudited) August 1, 2021 to August 31, 2021 (with comparative year to date information.)
- 2) Actual vs. Budget for year to date ending August 31, 2021



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF AUGUST 1 TO AUGUST 31, 2021

PREPARED ON OCTOBER 5, 2021

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
AUGUST 31, 2021
(UNAUDITED)

ASSETS

| | |
|---------------------------------------|----------------------|
| Current assets: | |
| Cash and cash equivalents | \$ 7,544,213 |
| Accounts receivable, net of allowance | 9,815,120 |
| Accrued revenue | 3,194,512 |
| Prepaid expenses | 30,953 |
| Other current assets and deposits | 6,883 |
| Total current assets | 20,591,681 |
| Restricted assets: | |
| Debt service reserve fund | 1,100,000 |
| Power purchase reserve fund | 2,206,986 |
| Total restricted assets | 3,306,986 |
| Noncurrent assets: | |
| Other noncurrent assets and deposits | 100,000 |
| Total noncurrent assets | 100,000 |
| TOTAL ASSETS | \$ 23,998,667 |

LIABILITIES

| | |
|-------------------------------------|----------------------|
| Current liabilities: | |
| Accounts payable | \$ 730,540 |
| Accrued payroll | 50,328 |
| Interest payable | 3,191 |
| Due to member agencies | 34,092 |
| Accrued cost of electricity | 6,667,912 |
| Other accrued liabilities | 108 |
| Security deposits - energy supplies | 2,295,640 |
| User taxes and energy surcharges | 121,818 |
| Current Portion of LT Debt | 1,284,800 |
| Total current liabilities | 11,188,429 |
| Noncurrent liabilities | |
| Term Loan- RCB | - |
| Total noncurrent liabilities | - |
| TOTAL LIABILITIES | \$ 11,188,429 |

NET POSITION

| | |
|---------------------------|----------------------|
| Restricted | |
| Local Programs Reserve | 224,500 |
| Restricted | 3,306,986 |
| Unrestricted | 9,278,752 |
| TOTAL NET POSITION | \$ 12,810,238 |

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF AUGUST 1, 2021 TO AUGUST 31, 2021
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING AUGUST 31, 2021 | YEAR TO DATE |
|---|--|---------------------|
| OPERATING REVENUE | | |
| Electricity sales, net | \$ 7,002,888 | 13,995,260 |
| TOTAL OPERATING REVENUES | 7,002,888 | 13,995,260 |
| OPERATING EXPENSES | | |
| Cost of electricity | 6,676,655 | 13,503,013 |
| Contract services | 285,843 | 484,756 |
| Staff compensation | 92,027 | 181,847 |
| General, administration, and other | 66,419 | 91,997 |
| TOTAL OPERATING EXPENSES | 7,120,944 | 14,261,613 |
| TOTAL OPERATING INCOME (LOSS) | (118,056) | (266,353) |
| NONOPERATING REVENUES (EXPENSES) | | |
| Interest income | 1,464 | 3,366 |
| Interest and related expenses | (3,950) | (8,001) |
| TOTAL NONOPERATING REVENUES (EXPENSES) | (2,486) | (4,635) |
| CHANGE IN NET POSITION | (120,542) | (270,988) |
| Net position at beginning of period | 12,930,780 | 13,081,226 |
| Net position at end of period | \$ 12,810,238 | \$ 12,810,238 |

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF AUGUST 1 TO AUGUST 31, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING August 31, 2021 | YEAR TO DATE |
|---|--|-------------------------------|
| | August 31, 2021 | DATE |
| CASH FLOWS FROM OPERATING ACTIVITIES | | |
| Receipts from electricity sales | \$ 6,955,459 | \$ 9,908,959 |
| Receipts for security deposits with energy suppliers | - | - |
| Payments to purchase electricity | (6,834,156) | (13,413,912) |
| Payments for contract services, general, and administration | (237,402) | 1,266,302 |
| Payments for staff compensation | (88,452) | (175,224) |
| Other cash payments | - | - |
| Net cash provided (used) by operating activities | (204,551) | (2,413,875) |
| CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES | | |
| Principal payments of Debt | (32,943) | (65,887) |
| Interest and related expenses | (4,051) | (8,069) |
| Net cash provided (used) by non-capital financing activities | (36,994) | (73,956) |
| CASH FLOWS FROM INVESTING ACTIVITIES | | |
| Interest income | 1,464 | 3,366 |
| Net cash provided (used) by investing activities | 1,464 | 3,366 |
| NET CHANGE IN CASH AND CASH EQUIVALENTS | (240,081) | (2,484,465) |
| Cash and cash equivalents at beginning of period | 11,091,280 | 13,335,664 |
| Cash and cash equivalents at end of period | \$ 10,851,199 | \$ 10,851,199 |
| Cash and cash equivalents included in: | | |
| Cash and cash equivalents | 7,544,213 | 7,544,213 |
| Restricted assets | 3,306,986 | 3,306,986 |
| Cash and cash equivalents at end of period | \$ 10,851,199 | \$ 10,851,199 |

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF AUGUST 1 TO AUGUST 31, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE | YEAR TO |
|---|------------------------|-----------------------|
| | PERIOD ENDING | DATE |
| | August 31, 2021 | DATE |
| | <hr/> | <hr/> |
| RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES | | |
| Operating Income (Loss) | \$ (118,056) | \$ (266,353) |
| (Increase) decrease in net accounts receivable | 168,923.00 | (3,878,579) |
| (Increase) decrease in accrued revenue | (242,949) | (259,221) |
| (Increase) decrease in prepaid expenses | (17,020) | (15,810) |
| (Increase) decrease in inventory - renewable energy credits | - | - |
| (Increase) decrease in other assets and deposits | - | - |
| Increase (decrease) in accounts payable | 122,571 | 246,579 |
| Increase (decrease) in accrued payroll | 3,575 | 6,623 |
| Increase (decrease) in due to member agencies | 9,309 | (89,314) |
| Increase (decrease) in accrued cost of electricity | (157,501) | 89,101 |
| Increase (decrease) in other accrued liabilities | - | 1,701,600 |
| Increase (decrease) security deposits with energy suppliers | - | - |
| Increase (decrease) in user taxes and energy surcharges | 26,597 | 51,499 |
| Net cash provided (used) by operating activities | \$ (204,551) | \$ (2,413,875) |

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2022
FOR THE YEAR TO DATE ENDING 07/31/2021

| GL# | Description | 8/31/2021 | 8/31/2021 | YTD | % |
|--------|---|-------------------|--------------------|------------------|-------------|
| | | YTD | YTD | | |
| | | FY2022 Actuals | FY2022 Budget | Variance | over/-under |
| 301.00 | Electric Revenue | 13,995,260 | 11,699,365 | 2,295,895 | 20% |
| 311.00 | Interest Revenues | 3,366 | 9,400 | (6,034) | -64% |
| 415.00 | Purchased Power | 13,503,013 | 12,164,803 | 1,338,210 | 11% |
| | Labor & Benefits | 181,848 | 195,134 | (13,286) | -7% |
| 451.10 | Salaries & Wages/Benefits | 153,780 | 162,913 | (9,133) | -6% |
| 451.20 | Contract Labor | - | 9,709 | (9,709) | -100% |
| 453.41 | Human Resources & Payroll | 28,067 | 22,512 | 5,555 | 25% |
| | Office Supplies & Other Expenses | 32,193 | 31,408 | 785 | 3% |
| 452.10 | Technology Costs | 4,365 | 5,672 | (1,307) | -23% |
| 452.15 | Office Supplies | 254 | 384 | (130) | -34% |
| 452.25 | Travel | - | 1,016 | (1,016) | -100% |
| 452.30 | CalCCA Dues | 19,615 | 20,702 | (1,088) | -5% |
| | CC Power | 7,960 | 3,333 | 4,627 | 139% |
| 452.35 | Memberships | - | 300 | (300) | -100% |
| | Contractual Services | 468,566 | 423,378 | 45,187 | 11% |
| 453.10 | Other Contract Services | - | 4,000 | (4,000) | -100% |
| 453.15 | Don Dame | 1,545 | 1,667 | (121) | -7% |
| 453.20 | SMUD - Credit Support | 143,819 | 83,630 | 60,189 | 72% |
| 453.21 | SMUD - Wholesale Energy Services | 97,974 | 97,662 | 312 | 0% |
| 453.22 | SMUD - Call Center | 135,143 | 130,955 | 4,187 | 3% |
| 453.23 | SMUD - Operating Services | 21,780 | 10,000 | 11,780 | 118% |
| 453.24 | Commercial Legal Support | - | - | - | 100% |
| 453.25 | Legal General Counsel | 16,694 | 25,215 | (8,521) | -34% |
| 453.36 | Regulatory Counsel | 25,231 | 32,443 | (7,212) | -22% |
| 453.37 | Joint CCA Regulatory counsel | 259 | 5,253 | (4,995) | -95% |
| 453.38 | Legislative - (Lobbyist) | 10,000 | 10,000 | - | 0% |
| 453.40 | Accounting Services | 121 | 4,203 | (4,081) | -97% |
| 453.41 | Financial Consultant | - | 4,167 | (4,167) | -100% |
| 453.42 | Audit Fees | 16,000 | 14,183 | 1,817 | 13% |
| 453.60 | PG&E Acquisition Consulting | - | - | - | 100% |
| | Marketing | 23,726 | 38,971 | (15,245) | -39% |
| 459.05 | Marketing Collateral | 23,726 | 37,933 | (14,207) | -37% |
| 459.15 | Community Engagement Activities & Sponsorship | - | 1,038 | (1,038) | -100% |
| | Programs | - | 22,500 | (22,500) | -100% |
| | Program Costs | - | 22,500 | (22,500) | -100% |
| | Rents & Leases | 3,180 | 4,020 | (840) | -21% |
| 457.10 | Hunt Boyer Mansion | 3,180 | 4,020 | (840) | -21% |
| | Other A&G | 35,708 | 67,998 | (25,290) | -37% |
| 459.08 | Development - New Members | - | 4,000 | (4,000) | -100% |
| 459.09 | Strategic Plan Implementation | 11,190 | 12,500 | (1,310) | |
| 459.10 | PG&E Data Fees | 22,503 | 49,999 | (27,496) | -55% |
| 459.20 | Insurance | 2,014 | 1,288 | 726 | |
| 459.70 | Banking Fees | 7,000 | 210 | 6,790 | |
| 463.10 | Miscellaneous Operating Expenses | 1,680 | 1,074 | 607 | 0% |
| 463.99 | Contingency | - | 21,690 | (21,690) | -100% |
| | TOTAL OPERATING EXPENSES | 14,249,914 | 12,970,976 | 1,285,938 | 10% |
| 481.10 | Interest on RCB loan | 8,001 | 4,018 | 3,983 | 99% |
| | NET INCOME | (259,289) | (1,266,229) | 999,940 | -79% |

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: October 14, 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 measures. Below is a summary:

The Legislature concluded the 2021 legislative session with final votes cast on Friday, September 10, 2021. Governor Newsom, after a resounding defeat of the attempted recall, has until October 10, 2021 to sign or veto all bills presented to him. The COVID-19 pandemic was the main story for a second legislative session in a row, but the recall attempt and record budget surplus were equally significant storylines. Legislators were required to reduce the amount of bills they pursued, each member could move 12 bills through the second house versus the previous normal of 20-25, as committee hearings were once again limited to a few select rooms that could allow for social distancing. A seemingly never-ending budget negotiation and resulting billions of dollars appropriated allowed legislators more opportunity to achieve their policy desires. Governor Newsom also utilized the robust budget on the campaign trail as he constantly touted billions of dollars in new funding for programs to address issues on voters’ minds as they headed to the polls. From homelessness to drought, wildfire to pandemic relief, the budget proved to be a political salvation on many fronts that hopefully results with equal on-the-ground results.

The ongoing budget negotiations also replaced the typical end of session gut and amend process, in which legislators propose new policy proposal at the last second. In 2021, new policy proposals were instead emerging from the Governor’s Office in the form of draft budget trailer bills. One of the proposed new programs would create a long duration energy storage program, (LDES) which would require the Department of Water Resources to procure a significant number of megawatts of LDES with costs and benefits applied to each retail end-use customer. This is very similar to past attempts to legislate the Eagle Crest pumped hydro project into viability. Opposition from a coalition of energy stakeholders, including CCAs and CalCCA, and environmental stakeholders as well as numerous legislators prevented the proposal from proceeding.

For VCE, and most CCAs, the priority bill this year was SB 612 (Portantino) which CalCCA developed and sponsored. This was the first bill CalCCA sponsored and was a successful effort

despite not passing the Legislature. Securing Senator Portantino as the author was an important initial victory as he chairs the powerful Senate Appropriations Committee. Successfully navigating the bill through the Senate and passing the bill off the Senate Floor with bipartisan support was a significant achievement that should not be overlooked. Ultimately, the bill was held in Assembly Utilities & Energy (U&E) Committee as the CPUC's decision on the underlying policy matter as well as labor's engagement convinced U&E chair Holden to deny the bill a hearing and turn it into a two-year bill.

Despite the setback of SB 612, 2021 had tangible success for CCAs as the first CCA sponsored bill passed the Legislature and was signed by the Governor. The fact that it was signed by VCE's own Assemblymember Aguiar-Curry is an added bonus. VCE played an important role in lobbying the bill through the committee process and actively participating in coalition decisions regarding strategy and amendments.

Further detail on VCE's legislative efforts can be found below.

1. SB 612 (Portantino). Electrical Corporations. Allocation of Legacy Resources.

Summary: This bill adds new sections to the Public Utilities Code that are designed to ensure fair and equal access to the benefits of legacy resources held in IOU portfolios and management of these resources to maximize value for all customers.

Specifically, the bill will:

- 1) Provide IOU, CCA, and direct access customers equal right to receive legacy resource products that were procured on their behalf in proportion to their load share if they pay the full cost of those products.
- 2) Require the CPUC to recognize the value of GHG-free energy and any new products in assigning cost responsibility for above-market legacy resources, in the same way value is recognized for renewable energy and other products.

Additional Information

- VCE Position: Support
- CalCCA Position: Sponsor
- Next hearing: This bill was held in Assembly Utilities & Energy Committee, and is a two-year bill.
- Bill language: [SB 612](#)

2. AB 843 (Aguiar-Curry). California Renewable Portfolio Standard Program: Renewable Feed-in-Tariff.

Summary: This bill authorizes CCAs to voluntarily bring contracts to the CPUC for bioenergy projects procured via the BioMAT feed-in-tariff. The bill would clarify that CCAs are eligible to retain the renewable portfolio standard and resource adequacy benefits of the energy procured under this section.

The BioMAT program was established by SB 1122 (2012, Rubio) and requires the three large IOUs to collectively procure by 2025 250MW of bioenergy across the following three categories (PG&E amounts shown):

1. Category 1: Biogas from wastewater treatment, municipal organic waste diversion, food processing, and co-digestion.
 - 30.5MW for PG&E | 28MW remaining
2. Category 2: Dairy and other agricultural bioenergy.
 - 33.5MW for PG&E | 13.4MW remaining
3. Category 3: Sustainable forest management byproducts bioenergy.
 - 47MW for PG&E | 36MW remaining

AB 843 passed the Legislature with tremendous bi-partisan support and is before the Governor for his signature or veto. The Governor has until October 10, 2021 to sign or veto all bills presented to him.

Additional Information

- VCE Position: Support
- CalCCA Position: Support
- The bill is being co-sponsored by MCE and Pioneer Community Choice Energy.
- Signed by Governor Newsom
- Bill language: [AB 843](#)

There are numerous bills that have been introduced and starting to be vetted through various policy committees. Aside from the two bills mentioned above, staff wanted to highlight the following bills to the Board.

| Measure | Summary | Calendar | VCE Position | CalCCA Position |
|-------------------|--|--|--------------|-----------------|
| AB 64 (Quirk) | AB 64 would require the PUC and CEC to develop a strategy, by January 1, 2024, that achieves (1) a target of 5 gigawatthours of operational long-term backup electricity, as specified, by December 31, 2030, and (2) a target of at least an additional 5 gigawatthours of operational long-term backup electricity in each subsequent year through 2045. The bill would require the PUC, by January 1, 2024, to submit the strategy developed in a report to the Legislature, and by January 1 of each 4th year thereafter, through January 1, 2044, would require the PUC to submit a report to the Legislature detailing the progress made toward achieving the targets of the long-term backup electricity supply strategy. | Held in Asm. U&E This bill is now a 2-year bill | None | None |
| AB 361 (R. Rivas) | Would authorize a local agency to use teleconferencing without | Signed by Gov. Newsom | None | None |

| | | | | |
|---------------------------------|---|--|--------------|---------------------------|
| | <p>complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting for the purpose of declaring or ratifying a local emergency, during a declared state or local emergency, as those terms are defined, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local emergency provided the legislative body makes certain determinations by majority vote.</p> | | | |
| <p>AB 427 (Bauer-Kahan)</p> | <p>Establishes rules that allow demand response program and resources procured by an LSE to meet the LSE’s resource adequacy requirements regardless of whether the program is integrated into the CAISO market. Additionally, the bill adopts a baseline methodology that treats energy storage charging as load in baseline calculations for DR programs and allows BTM solar + storage participating in a DR program to deliver electricity to the grid to provide RA. Lastly, the bill directs the CPUC to establish a capacity valuation methodology for storage and solar + storage BTM resources and that it applies to DR resources coupled with solar + storage.</p> | <p>Held in Asm. Appropriations This bill is now a 2-year bill</p> | <p>Watch</p> | <p>Watch</p> |
| <p>AB 1088 (Mayes)</p> | <p>This bill would establish the California Procurement Authority (CPA) as a state-level central procurement entity for the electric sector, including as a provider of last resort (POLR) for load-serving entities (LSEs) that opt out of the procurement function. The CPA would also fill any resource adequacy (RA) and integrated resource planning (IRP) procurement gaps and serve as an LSE for customers not served by another LSE. There is a lot in this bill</p> | <p>Held in Asm. U&E This bill is now a 2-year bill</p> | <p>None</p> | <p>Support if Amended</p> |

| | | | | |
|--------------------------------|---|---|-------------|------------------------------|
| | <p>and if the bill sounds familiar, that's because it is very similar to a bill sponsored by CalCCA in 2020 however this bill adds POLR provisions. The bill is sponsored by San Diego Gas & Electric and is meant to create a pathway for them to exit the retail side of their business.</p> | | | |
| <p>AB 1161 (E. Garcia)</p> | <p>Officially, AB 1161 aims to fast-track the deployment and procurement of new zero carbon energy resources to fulfill 100% of state agency needs by 2030, in addition to LSE procurement. Officially, AB 1161 also seeks to assist in balancing the grid, increasing reliability, and facilitating integration of other renewables with these new investments. There is concern that AB 1161 is actually seeking to create a pathway for long duration pumped storage to be built in and near Joshua Tree National Park. AB 1161 seeks to accomplish the official and unofficial goals by:</p> <p>Accelerating the SB 100 zero carbon electricity target for state agencies from 2045 to 2030, requiring the California Department of Water Resources (DWR) to enter into PPAs for the development of new zero GHG resources to satisfy the accelerated target for all state agencies, coordinating available state incentives and financing assistance to lower the cost of electricity from state-procured resources, permitting state agencies to remain with existing LSEs (including CCA and no new obligations or costs would be assigned to existing LSEs), and funding net above-market costs of long-term contracts from sources other than utility rates including the general fund. Rather than directly serving the state agency load, the bill would require the DWR to invest</p> | <p>Held in Asm. U&E</p> <p>This bill is now a 2-year bill</p> | <p>None</p> | <p>Oppose Unless Amended</p> |

| | | | | |
|-------------------|--|---|---------------------|-------|
| | in new projects in an amount equivalent to the load, and then re-sell the RA attributes and energy (but not RECs) back into the wholesale markets. LSEs would not include the state agency load in their Power Source Disclosure label or in their RPS requirements. | | | |
| SB 67 (Becker) | The bill would establish the California 24/7 Clean Energy Standard Program, which would require that 85% of retail sales annually and at least 60% of retail sales within certain subperiods by December 31, 2030, and 90% of retail sales annually and at least 75% of retail sales within certain subperiods by December 31, 2035, be supplied by eligible clean energy resources, as defined. | Held in Sen. EUC This bill is now a 2-year bill | Developing Position | None |
| SB 99 (Dodd) | Would set forth guiding principles for plan development, including equitable access to reliable energy, as provided, and integration with other existing local planning documents. The bill would require a plan to, among other things, ensure that a reliable electricity supply is maintained at critical facilities and identify areas most likely to experience a loss of electrical service. This bill contains other related provisions. | Held on Asm. Appropriations Suspense File | Support | None |
| SB 204 (Dodd) | Places the Base Interruptible Program (BIP) into statute. The BIP is an emergency electricity demand response program established by a proceeding years ago. The program is regulated by the PUC and used as a last line of defense against rolling blackouts. While the bill places the program in statute, it only makes reference to the IOUs offering and administering the program even though an existing decision allows CCAs to offer and administer the program to their customers. | Held on Sen. Appropriations Suspense File This bill is now a 2-year bill | | Watch |

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

To: Board of Directors
From: Mitch Sears, Interim General Manager
Subject: Regulatory Monitoring Report – Keyes & Fox
Date: October 14, 2021

Please find attached Keyes & Fox’s September 2021 Regulatory Memorandum dated October 7, 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 October 7, 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: October 7, 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 including VCE filed testimony and rebuttal testimony, followed by briefs and reply briefs on September 20, 2021, and September 27, 2021, respectively. VCE’s testimony focused on its Agricultural Demand Response pilot proposal. On September 23, 2021, the CPUC issued D.21-09-045, denying several applications for rehearing of D.21-03-056, the decision from the first phase of this proceeding. On September 30, 2021, the ALJ issued a Ruling taking official notice of the “Revised 2022 Summer Stack Analysis” prepared by CEC and adopted at its September 8, 2021 business meeting.
- **PG&E Regionalization Plan:** Settling parties filed a motion to request Commission approval of two settlement agreements on August 31, 2021. Parties filed comments and reply comments on the settlement agreements in September.
- **RPS Rulemaking:** The ALJ issued a Proposed Decision and Commissioner Rechtschaffen issued an Alternate Proposed Decision modifying the RPS program confidentiality rules. The modifications would significantly affect how long VCE’s contract information is kept confidential. Separately, the ALJ issued a Ruling allowing parties of R.05-06-040, a rulemaking relating to confidentiality of information, to file comments on the pending PD and alternate PD.
- **IRP Rulemaking:** The ALJ issued a Ruling granting the motions to file under seal filed by VCE and 40 other LSEs regarding IRPs filed over a year ago on September 1, 2020, as well as biennial procurement compliance filings. Parties also filed opening comments in response to an August ALJ Ruling seeking comments on a proposed Preferred System Plan.
- **RA Rulemaking (2021-2022):** OhmConnect filed a Petition for Modification of D.20-06-031, seeking changes that would allow LSEs to use more demand response resources to meet their RA requirements. The first workshop to develop PG&E’s Slice-of-Day proposal was held on the topic of Structural Elements.

- **PG&E 2022 ERRA Forecast:** Intervenor testimony was filed September 22, 2021.
- **PG&E's 2019 ERRA Compliance:** The Assigned Commissioner issued a Ruling consolidating this proceeding with SCE's and SDG&E's ERRA Compliance proceedings (A.20-04-002 and A.20-06-001, respectively).
- **PCIA Rulemaking:** Parties filed comments in response to an August Ruling on the Energy Division staff proposal to change the issue date of the Market Price Benchmark calculations. The ALJ also issued a Ruling requesting comments on ERRA and PCIA issues, to which parties filed comments on October 1, 2021.
- **PG&E's 2020 ERRA Compliance:** The ALJ issued a Ruling cancelling the evidentiary hearing after parties resolved disputed facts. A settlement conference between parties was also held.
- **Provider of Last Resort Rulemaking:** The Assigned Commissioner issued a Scoping Memo and Ruling on September 16, 2021.
- **2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking:** The ALJ issued a Ruling requesting comments on a proposed 2022 Wildfire Fund Nonbypassable Charge. No party filed comments by the October 1, 2021 deadline.
- **PG&E's Phase 1 GRC:** No updates this month. In August, numerous parties, including a coalition of eight CCAs in PG&E's service territory, filed protests or responses to PG&E's 2023 Phase 1 general rate case (GRC) application. The prehearing conference was held August 30, 2021.
- **PG&E's Phase 2 GRC:** No updates this month. On August 25, 2021, the Assigned Commissioner issued an Amended Scoping Memo and Ruling, extending the deadlines and schedule in this proceeding.
- **Investigation into PG&E's Organization, Culture and Governance:** No updates this month. On August 18, CPUC President Batjer sent a letter to PG&E stating that she has directed CPUC staff to investigate whether to advance PG&E further within the Enhanced Oversight and Enforcement process.
- **Direct Access Rulemaking:** No updates this month. In August, CalCCA filed a response to a July application for rehearing filed by a coalition of parties supporting expansion of Direct Access, who challenged a June CPUC decision that recommended against any re-opening of Direct Access. This proceeding is otherwise closed.
- **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.
- **Miscellaneous Updates:**
 - A new [Order Instituting Rulemaking](#) adopting safety culture assessments under SB 901 is on the CPUC's October 7, 2021, meeting [Agenda](#).
 - The CPUC [fined](#) PG&E \$106 million for its botched October 2019 PSPS events, during which time its website didn't work and customers were not properly notified in advance of PSPS events. The penalty will be offset by \$86 million based on the bill credits PG&E has already provided to some electric customers in 2019, resulting in a net penalty assessed on PG&E of approximately \$20 million.
 - PG&E filed Advice Letter 6348-E, stating its intent to sell Carbon Free Energy generated in delivery year 2022 with the standards and criteria in Appendix P of PG&E's Conformed 2014 Bundled Procurement Plan.
 - In R.18-07-006, the CPUC issued a revised [Scoping Ruling](#), opening a third phase of the proceeding to consider strategies to mitigate future energy rate increases. Comments on the Ruling are due October 15, 2021.

Ensuring Summer 2021 Reliability

On September 1, 2021, and September 10, 2021, parties including VCE filed testimony and reply testimony, respectively, on the Staff Concepts Proposal. On September 17, 2021, an Assigned Commissioner's Ruling responded to SCE testimony by clarifying that a separate resolution or decision is not necessary for the IOUs to pursue utility-owned storage projects that can be online by summer 2022. Parties including VCE filed briefs and reply briefs on September 20, 2021, and September 27, 2021, respectively. On September 23, 2021, the CPUC issued D.21-09-045, denying applications for rehearing of D.21-03-056 filed separately by The Protect Our Community Foundation (PCF), and Californians for Renewable Energy (CARE) and filed jointly by Sierra Club, Union of Concerned Scientists, and the California Environmental Justice Alliance (CEJA). On September 30, 2021, the ALJ issued a Ruling taking official notice of the "Revised 2022 Summer Stack Analysis" prepared by CEC and adopted at its September 8, 2021 business meeting.

- **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 ensure reliable electric service in the event that an extreme heat storm occurs in the summer of 2021.

D.21-03-056 instituted modifications to the planning reserve margin (PRM), effectively increasing the PRM beginning summer 2021 from 15% to 17.5%. For 2021, this results in a minimum target of incremental procurement of 450 MW for PG&E, 450 MW for SCE, and 100 MW for SDG&E. The net costs associated with this incremental procurement would be shared by all customers (including CCA customers) in each IOU's service territory. It also authorized the IOUs to implement a Flex Alert paid media campaign program to encourage ratepayers to voluntarily reduce demand during moments of a stressed grid and adopts modifications and expansions to the Critical Peak Pricing (CPP) program, to be in place for the summer of 2021. D.21-03-056 also established an ELRP to provide emergency load reduction and serve as an insurance policy against the need for future rotating outages. The initial duration of the ELRP pilot program is five years, 2021-2025. After-the-fact pay-for-performance will be made at a prefixed energy-only ELRP Compensation Rate (\$1,000/MWh for up to an annual 60-hour limit) applied to incremental load reduction. For PG&E, the budget caps are \$3.9 million for administration and \$28.6 million for customer compensation.

On August 10, 2021, the Assigned Commissioner issued an Amended Scoping Memo and Ruling addressing Gov. Newsom's emergency proclamation on accelerating plans for the construction, procurement, and rapid deployment of new clean energy and storage projects to mitigate the risk of capacity shortages and increase the availability of carbon-free energy at all times of day by scoping the current phase of the proceeding to include:

- **Increase peak and net peak resources in 2022 and 2023**, including: (1) expedited resource procurement, (2) updates to RA requirements (3) support for CAISO's Capacity Procurement Mechanism authority, (4) analysis of need – particularly at net peak – and resources available to meet this need, in light of recent trends in weather and resource availability, (5) expedited IRP procurement, (6) Planning Reserve Margin adjustment for 2023, (7) interconnection, and (8) other opportunities to increase supply.
- **Reduce peak and net-peak demand in 2022 and 2023**, including: (1) Flex Alert, (2) Critical Peak Pricing, (3) Emergency Load Reduction Program Pilot, (4) modifications to existing demand response programs (including base interruptible program, agricultural and pumping interruptible, air condition cycling), (5) new demand response programs or pilots, (6) EV participation in DR or load management, (7) measures to minimize loss of demand response enrollment, (8) rate structures, including pilot rates introduced for a limited period or limited to certain customer classes or subsets of such classes (9) other opportunities to reduce demand or net demand including virtual power plants, DER export, distributed generation.

The Staff Concepts Paper offered a number of ideas to increase peak resources and reduce peak demand, including a modified version of VCE's proposal to tap into the load reduction/ shift

potential available in the pumping sector. A CPUC Ruling requested parties comment on and expand on the modified version of VCE's proposal. Staff's concept proposal included a provision to hold PG&E harmless for any difference in cost recovery that would occur under such a pilot. It also proposed to design the experimental rate to incorporate the ideas in the 6-step Distributed Energy Resource & Demand Flexibility roadmap described by Energy Division Staff at the May 25, 2021, workshop on Advance DER and Demand Flexibility Management. VCE and other parties were encouraged to submit a more fleshed out proposal on this topic. Among the other concepts identified by Staff are allowing residential customers to participate in the ELRP program and get paid \$1/kWh for demand reduction, implementing penalties on LSEs for failure to comply with D.19-11-016 procurement mandates, providing incentives to LSEs to accelerate procurement ordered under D.21-06-035, increasing RA non-compliance penalties, and establishing a new non-bypassable charge for cost recovery of costs associated with emergency procurement that adds additional reserve margin and does not already fit into an existing cost recovery mechanism.

Details: VCE's testimony and briefs requested that the CPUC approve VCE's proposal for an Agricultural Demand Flexibility Pilot and approve Polaris' proposal for Demand Flexibility Pilots in IOU territories. VCE's proposed pilot would be made available to 5 MW of customer load on irrigation pumping tariffs. The pilot would include automation of these loads to receive dynamic price signals and implementation of an experimental rate that incorporates dynamic energy and capacity charges in hourly prices. Customers who successfully respond to the price signals and shift load out of expensive hours—typically the ramp hours—will enjoy bill savings and the total cost to serve VCE customers would be reduced.

The CEC's Summer 2022 Stack Analysis identifies the risk of potential energy shortfalls under both average and extreme weather planning reserve margins next summer. This analysis projects an additional 200 MW to 4,350 MW of resources may be required to ensure electric system reliability for peak and net-peak hours during summer 2022 without the use of contingency resources.

- **Analysis:** A June 10, 2021, Ruling initially limited additional testimony and consideration in this proceeding going forward to a discussion of proposals made by PG&E and CEJA. In response to the Governor's emergency proclamation, however, the Amended Scoping Memo and Ruling significantly expanded the scope to include other topics and issues that could result in additional resources to maintain grid reliability in 2022 and 2023. This could include additional or accelerated procurement mandates for LSEs, or other changes that could be implemented through LSEs to increase supply and decrease demand during peak summer times in 2022 and 2023.

VCE's proposal to implement an Agricultural AutoDR Demand Flexibility pilot for customers on irrigation pumping tariffs could result in up to 5 MW of connected irrigation load being served, reducing those customers' bills as well as VCE's cost to serve its customers. PG&E and the California Large Energy Consumers Association filed reply testimony critiquing VCE's pilot proposal.

- **Next Steps:** A proposed decision is expected to be issued October 29, 2021, with a final decision expected November 18, 2021.
- **Additional Information:** [D.21-09-045](#) denying rehearing of D.21-03-056 (September 23, 2021); [Ruling](#) providing Staff Concepts Proposal (August 16, 2021); [Ruling](#) noticing CEC draft Preliminary 2022 Summer Supply Stack Analysis (August 12, 2021); [Amended Scoping Memo and Ruling](#) (August 10, 2021); [D.21-06-027](#) (approved June 24, 2021); [Order](#) denying applications for rehearing (May 20, 2021); [D.21-03-056](#) (March 25, 2021); [D.21-02-028](#) directing IOUs to seek additional capacity for summer 2021 (February 17, 2021); [Scoping Memo and Ruling](#) (December 21, 2020); [ALJ Ruling and Staff Proposal](#) (December 18, 2020); [Order Instituting Rulemaking](#) (November 20, 2020); Docket No. [R.20-11-003](#).

PG&E Regionalization Plan

On September 10, 2021, Parties, including VCE, filed comments on the August 31, 2021, motion for approval of settlement agreements, followed by reply comments on September 17, 2021.

- Background:** In D.20-05-051 approving PG&E's reorganization following bankruptcy, PG&E was directed to file a regionalization proposal (Docket No.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. 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.

In August 2020, 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.

In February 2021, PG&E submitted its updated regionalization proposal ("Updated Proposal"). In response to feedback, PG&E modified its five regions (renamed North Coast, North Valley & Sierra, Bay Area, South Bay & Central Coast, and Central Valley), including moving Yolo County from Region 1 to Region 2 (North Valley & Sierra), where it would be grouped with the following counties: Colusa, El Dorado, Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Solano, Sutter, Tehama, and Yuba. PG&E also provided more information on the new leadership positions that it is creating and its "Lean Operating System" implementation.

Currently, PG&E is in Phase 1 of 3 of its regionalization plan, which is focused on refining regional boundaries, establishing roles and governance for regional leadership, and recruiting and hiring for those positions. In Phase 2 (second half of 2021 through 2022), PG&E will establish and implement the regional boundaries and provide the resources and staffing to support it. In Phase 3 (2023 and after), PG&E will continue to reassess, refine and collaborate with other functional groups to improve efficiencies, safety, reliability and customer service.

On August 31, 2021, PG&E, the California Farm Bureau Federation, the California Large Energy Consumers Association, the Center for Accessible Technology, the Coalition of California Utility Employees, the Public Advocates Office at the California Public Utilities Commission ("Cal Advocates"), the Small Business Utility Advocates, and William B. Abrams filed a motion for approval of their settlement agreement ("Multi-Party Settlement Agreement"). A separate settlement agreement is between the South San Joaquin Irrigation District and PG&E. The Multi-Party Settlement Agreement includes a framework within which PG&E will facilitate a stakeholder engagement process for parties to the Multi-Party Settlement Agreement to provide updates and a non-binding forum for input for stakeholders. The proposed settlement would restrict participation in the Regionalization Stakeholder Group to parties or others who agree to the scope, procedures and protocols of the Regionalization Stakeholder group as outlined in the settlement. PG&E will host two public workshops in 2022 and for each year until the completion of Phase III or its regionalization implementation to provide updates to the public about its regionalization implementation progress.

In the separate PG&E/SSJID Settlement Agreement, PG&E clarified and confirmed that its implementation of regionalization as managed by its Regionalization Program Management Office will not include any work to oppose SSJID's municipalization efforts. However, SSJID also acknowledged that PG&E may continue to respond to SSJID's municipalization efforts in other

forums and proceedings separate from the regionalization proceeding and/or implementation of the Updated Regionalization Proposal.

- **Details:** VCE filed comments on the settlement jointly with Pioneer Community Energy that were critical of PG&E's Updated Proposal and the settlement. VCE and Pioneer recommended that the CPUC reject the settlement and require changes to PG&E's Updated Proposal, including alignment with the boundaries of regional councils of governments ("COGs") and requirements to coordinate with COGs, the development of metrics to measure PG&E's progress on key safety and customer relations issues, greater coordination between PG&E and CCAs, and improvements to the Regionalization Stakeholder Group to expand its access and efficacy.
- **Analysis:** The implications of PG&E's regionalization plan on CCA operations, customers, and costs are largely unclear based on the information presented in PG&E's application and updated 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. It could also impact municipalization efforts, although the pending SSJID settlement agreement stated that PG&E's regionalization efforts will not be in opposition to SSJID's municipalization. As part of Region 2, VCE would be grouped with several northern counties in central and eastern California.
- **Next Steps:** A Proposed Decision will be issued next.
- **Additional Information:** [Joint Motion](#) for approval of Settlement Agreements (August 31, 2021); Ruling granting schedule modification (August 20, 2021); [Ruling](#) denying evidentiary hearing (July 28, 2021); PG&E [Joint Case Management Statement](#) (July 20, 2021); [Amended Scoping Memo and Ruling](#) (June 29, 2021); [PG&E Updated Regionalization Proposal](#) (February 26, 2021); [Ruling](#) modifying procedural schedule (December 23, 2020); [Scoping Memo and Ruling](#) (October 2, 2020); [Application](#) (June 30, 2020); [A.20-06-011](#).

RPS Rulemaking

On September 16, 2021, the ALJ issued a Proposed Decision (PD) and Commissioner Rechtschaffen issued an Alternate Proposed Decision (APD), both of which would significantly modify the RPS program confidentiality rules. On September 30, 2021, the ALJ issued a Ruling allowing parties of R.05-06-040, a rulemaking relating to confidentiality of information, to file comments on the pending PD and alternate PD.

- **Background:** This proceeding addresses ongoing RPS issues. VCE submitted its Final 2021 RPS Procurement Plan on February 19, 2021, its Draft 2021 RPS Procurement Plan on July 1, 2021, and its 2020 RPS Compliance Report on August 2, 2021.

On September 18, 2020, the ALJ issued a Ruling attaching 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). It is currently unclear when the CPUC will address this proposal.

- **Details:** Current rules allow LSEs to keep procurement prices confidential for the earlier of 3 years *after* the commercial operation date (COD) or 1 year following the expiration of a contract. Both the PD and APD find that this current window, which typically results in data being held confidential for 5-10 years from the date of contract execution, should be modified.
 - **Contracts Not Requiring CPUC Approval (e.g., VCE's contracts):** The PD would order that contract prices and terms become public **30 days** after *the earlier of* the COD or start of delivery date or 3 years after the contract execution date. The APD makes this information public *6 months after contract execution*.
 - **REC-Only Contracts.** The PD would require contract prices and terms for REC-only contracts to be made public 30 days after contract execution for existing facilities, and 30

days after the COD for new facilities. The APD makes this information public for both new and existing facilities 6 months after CPUC approval, or 6 months after the contract execution date where CPUC approval is not required.

- **Competitive Solicitation Information.** The PD first authorizes the release of information on bids that do not result in RPS contracts and RPS bids that are not shortlisted in aggregated form after the final contracts are submitted for CPUC approval where there are at least 3 bidders in a resource category. Additionally, the PD provides a 3-year confidentiality period for individual bidder information after the close of the solicitation. The APD differs from the PD in that it requires individual bidder information to be made public 1 year after final contracts are submitted for CPUC approval or the close of the solicitation (if no contracts are executed).
 - **Claims of Confidentiality for RPS Compliance Reports.** The PDs apply the same rules for all retail sellers, in a continuation of guidance adopted in D.06-06-066. Essentially, securing confidential status will require a retail seller to demonstrate evidence about the type of data and the harm caused by its release to obtain special confidentiality status where a request falls outside the standard confidentiality matrix.
 - **Load Forecast & Renewable Net Short.** Currently, per D.06-06-066 retail sellers may utilize a 4-year confidentiality window composed of 3 future years and 1 past year, where the past year refers to the year in which the compliance report is filed. The PDs would shorten the window to 3 years, composed of 2 future years and 1 past year. Thus for the 2022 RPS filings, this information will be confidential for 2022-2024 but the 2025 data would be public. Further, as data becomes 1 year old, it will also become public, such that for the 2022 forecast, the data for 2023 will become public in 2024 when it is 1 year old (and so forth for 2024 data in 2025).
 - **Effective Date & Transition Provisions.** Both PDs specify that the rules will become effective immediately upon their adoption for new contracts executed after the date of a Decision. For contracts approved before the effective date, the existing rules are maintained with the exception of expired contracts, which can be made public immediately. RPS compliance reports and any compliance documents submitted on or after January 1, 2022 must follow the revised confidentiality rules.
- **Analysis:** The PD and APD would significantly reduce the period of time for which VCE and other LSEs could keep RPS data confidential, as detailed above.
 - **Next Steps:** Comments on the PDs are due October 6, and replies are due October 11. Parties to R.05-06-040, who are not parties to R.18-07-003, may file comments on the PD and Alternate PD by October 20, 2021, and reply comments by October 25, 2021. Parties to R.18-07-003 may also file additional reply comments by October 25, 2021 limited to responding to the October 20, 2021 comments.
 - **Additional Information:** [Ruling](#) allowing R.05-06-040 parties to file comments (September 30, 2021); [Proposed Decision](#) and [Alternate Proposed Decision](#) on RPS confidentiality (September 16, 2021); [Ruling](#) aligning IOU RPS Procurement Plan requirements with PCIA decision (May 26, 2021); [Ruling](#) extending deadline for draft 2021 RPS Procurement Plan (May 7, 2021); [Ruling](#) establishing issues and schedule for 2021 RPS Procurement Plans (March 30, 2021); [D.21-01-005](#) directing retail sellers to file final 2020 RPS Procurement Plans (January 20, 2021); [Ruling](#) on [Staff proposal](#) aligning RPS/IRP filings (September 18, 2020); [Scoping Ruling](#) (November 9, 2018); Docket No. [R.18-07-003](#).

IRP Rulemaking

On September 23, 2021, the ALJ issued a Ruling granting the motions to file under seal filed by VCE and 40 other LSEs regarding IRPs filed over a year ago on September 1, 2020, as well as biennial procurement compliance filings. On September 27, 2021, parties filed opening comments in response to an August ALJ Ruling seeking comments on a proposed Preferred System Plan.

- **Background:** 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 September 24, 2020 Scoping Memo and Ruling clarified that the issues planned to be resolved in this proceeding are organized into the following tracks:

- General IRP oversight issues: This track will consider moving from a two-year to a three-year IRP cycle, IRP filing requirements, and interagency work implementing SB 100.
- Procurement track: D.21-06-035 establishing the 11,500 MW by 2026 procurement mandate resolved many of the procurement track issues. However, the CPUC will conduct additional quantitative and qualitative analysis in the next few months to help inform the preferred system portfolio (PSP) decision, expected by the end of 2021, where it may consider additional capacity procurement requirements, including the possibility of additional fossil fuel procurement.
- Preferred System Portfolio Development: The CPUC has aggregated LSE portfolios, analyzed the aggregate portfolio, and proposed a PSP. The next step after party comments and reply comments will be the issuance of a proposed decision and final decision adopting a PSP.
- TPP: *Completed.* D.21-02-028 transmitted portfolios 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.

D.20-12-044 established 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 requires LSEs to file bi-annual (due February 1 and August 1) updates on their procurement progress relative to the contractual and procurement milestones defined in the decision. 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).

D.21-06-035 established a new procurement mandate of 11,500 MW of additional zero-emitting or RPS-eligible net qualifying capacity to be procured by 2026 by LSEs through long-term (10 or more years) contracts. It ordered that the resources from Diablo Canyon be replaced with at least 2,500 MW of zero-emitting resources. In addition, it specifies that 2,000 MW of the procurement mandate required for 2026 must be “long-lead-time” (LLT) resources, with half coming from long-duration storage and the other half from zero-emitting resources with an 80% or greater capacity factor, with the Decision pointing to geothermal and biomass as the resources best-suited to meet this category. VCE is permitted to use resources that were not online or in-development and contracted and approved by its Board as of June 30, 2020 to count towards its procurement requirements (i.e., contracts approved by the VCE Board and executed after June 30, 2020, can count towards VCE’s procurement mandates). LSEs will **not** be given the option to opt out up front from providing their proportional share of the capacity required by D.21-06-035. The February 1, 2023 compliance filing will be the first check on the status of LLT resource procurement. VCE’s new obligations and a description of the specific resource requirements for each subcategory of procurement are detailed in the following table.

Table: VCE New & Additional Procurement Obligations Under D.21-06-035

| | 2023 | 2024 | 2025 | 2026 (Long-Lead Time Resources) | | Diablo Replacement | Total |
|-----------------------------------|-------------------------------|-------------------------------|-------------------------------|--|--|---|-------|
| | | | | Long-Duration Storage | Zero-Emitting Generation Resources | Minimum zero-emitting capacity by 2025 (subset of 2023, 2024, and 2025 columns) | |
| VCE Obligation (September NQC MW) | 8 | 23 | 6 | 4 | 4 | 10 | 44 |
| Resource Requirements | Zero-emitting or RPS eligible | Zero-emitting or RPS eligible | Zero-emitting or RPS eligible | Must be able to discharge at maximum capacity over at least an eight-hour period from a single resource. | Zero-emitting resources or those that otherwise qualify as eligible under the RPS program and have at least an 80% capacity factor. Must be a generating resource, not storage, able to generate when needed, for as long as needed. Must not be use limited or weather dependent. May not have any on-site emissions, except if the resource otherwise qualifies under the RPS. | (1) Be from a generation resource, a generation resource paired with storage (physically or contractually), or a demand response resource; (2) Be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 through the end of hour ending 2200), Pacific Time, at a minimum; and (3) Be able to deliver at least 5 megawatt-hours of energy during each of these daily periods for every megawatt of incremental capacity claimed. | |

An August 17, 2021 Ruling provided a summary of analysis conducted by CPUC Staff to recommend key elements of the preferred system plan (PSP), including a preferred resource portfolio. The Ruling describes how and why LSEs’ IRPs submitted in September 2020 are expected to fall short of meeting GHG and reliability targets, due to a collective insufficiency of planned new capacity. However, when incorporating the expected impacts of the procurement mandates in D.21-06-035 on mid-term reliability, the Ruling states that reliability and GHG goals are likely to be achieved. The Ruling recommends that the 38 MMT Core Portfolio be adopted by the CPUC as the PSP. This would be a more aggressive GHG target than the 46 MMT by 2030 target previously adopted.

- **Details:** The September 23, 2021 Ruling approving LSE motions to keep certain IRP procurement data confidential also directed LSEs to re-file certain updated information that has been informally provided to Energy Division staff through a formal filing by October 15, 2021.
- **Analysis:** The August 17, 2021 Ruling would accelerate the build-out of clean energy resources by adopting a more aggressive GHG reduction target for the electricity sector over the coming decade. It also poses numerous questions that suggest the CPUC is considering other major changes to procurement mandates that could either result in additional or accelerated procurement requirements for VCE or the imposition of a non-bypassable charge, including on VCE customers, to recover the costs of additional procurement needed for reliability or policy reasons. Compliance filings submitted in August and early September demonstrate VCE’s progress towards meeting milestones and requirements with various CPUC procurement mandates.
- **Next Steps:** The schedule is as follows:
 - Procurement track: Reply comments on the August 17, 2021 Ruling are due October 11, 2021. A compliance filing providing updated IRP information must be filed by October 15, 2021.
 - General IRP oversight issues: A Proposed Decision on the IRP cycle (e.g., possibly moving from every 2 years to a 3-year cycle) is anticipated to be issued soon.
 - Preferred System Portfolio Development: A proposed decision and a final decision will be issued after reply comments are filed in response to the August Ruling.

- **Additional Information:** [Ruling](#) granting IRP confidentiality motions (September 23, 2021); [Ruling](#) proposing a PSP (August 17, 2021); [Ruling](#) extending procurement compliance filing deadline (July 10, 2021); [D.21-06-035](#) establishing a 11,500 MW by 2026 procurement mandate (June 24, 2021); [Ruling](#) Setting August 1, 2021 Procurement Compliance Deadline (April 9, 2021); [D.21-02-028](#) recommending portfolios for CAISO's 2021-2022 TPP (February 17, 2021); [D.20-12-044](#) establishing a backstop procurement process (December 22, 2020); [Scoping Memo and Ruling](#) (September 24, 2020); [Resolution E-5080](#) (August 7, 2020); [Ruling](#) on IRP cycle and schedule (June 15, 2020); [Order Instituting Rulemaking](#) (May 14, 2020); Docket No. [R.20-05-003](#).

RA Rulemaking (2021-2022)

On September 9, 2021, OhmConnect filed a Petition for Modification of D.20-06-031. On September 22, 2021, the first workshop to develop PG&E's Slice-of-Day proposal was held on the topic of Structural Elements.

- **Background:** This proceeding is divided into 4 tracks, with the focus in 2021 being on Tracks 3 and 4, described in more detail below. Going forward, a workshop process will be used to generate an RA restructuring proposal in Q1 2022, with the goal of implementing more substantial program changes in 2023 for the 2024 RA compliance year.

Track 3A (completed): D.20-12-006, issued December 2020, addressed the issues of the financial credit mechanism and competitive neutrality rules for the CPEs. It approved 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 adopted PG&E's competitive neutrality proposal for PG&E's service territory. Finally, D.20-12-006 found that the Local Capacity Requirements Working Group should continue to discuss recommendations and develop solutions for consideration in CAISO's 2022 LCR process.

Track 3B.1 and Track 4 (completed): D.21-06-029, issued June 2021, adopted local capacity requirements for 2022-2024, flexible capacity requirements for 2022, and refinements to the RA program. It adopted a series of changes to the Maximum Cumulative Capacity (MCC) buckets, which function as limits on the amount of RA that may be procured from resources with different characteristics. It required resources in all MCC buckets to have availability on Saturday for the 2022 RA compliance year. This had the effect of modifying the DR and Categories 1 and 2 buckets to add Saturday. DR contracts with an execution date prior to the effective date of D.21-06-029 will be grandfathered and not subject to the new Saturday availability requirement. It also revised the Category 1 availability criteria (4 consecutive hours of availability from 4-9 p.m. from May-September) to increase the monthly minimum availability from 40 hours to 100 hours (and 96 hours for February) and to require year-round availability. D.21-06-029 requested that the CEC launch a stakeholder working group process as part of the 2021 IEPR and make recommendations on several topics intended to support a comprehensive and consistent DR measurement and verification strategy, to be considered for implementation during the 2023 RA compliance year. Finally, D.21-06-029 added a new RA deficiencies penalty structure to the current penalty structure, layering on a penalty multiplier for repeat RA deficiencies based on a point system beginning in the 2022 RA compliance year.

Track 3B.2 (Ongoing): D.21-07-014 rejected CalCCA/SCE's proposal for restructuring the RA program, and instead found that PG&E's "slice-of-day" proposal best addresses the identified principles and the concerns with the current RA framework and if is further developed, is best positioned to be implemented in 2023 for the 2024 compliance year. Therefore, it directed parties to collaborate to develop a final restructuring proposal based on PG&E's slice-of-day proposal through a series of workshops. The PG&E Slice of Day Framework will establish RA requirements based on a "slice-of-day" framework, which seeks to ensure load will be met in all hours of the day, not just during gross peak demand hours. The proposal also attempted to ensure there is sufficient energy on the system to charge energy storage resources. The

proposed framework would establish RA requirements for multiple slices-of-day across seasons and would establish a counting methodology to reflect an individual resource’s ability to produce energy during each respective slice (e.g., six four-hour periods of the day).

- **Details:** OhmConnect’s Petition for Modification of D.20-06-031 requested that the CPUC raise the demand response Maximum Cumulative Capacity limit of 8.3% to 11.3%. OhmConnect says that the change is needed to create the room for growth envisioned in D.20-06-031 and meet the requirements of the Governor’s Emergency Proclamation ordering state energy agencies to expedite and expand DR programs to reduce the likelihood of future rotating power outages.
- **Analysis:** The workshop process on PG&E’s Slice of Day proposal could result in major changes to the RA program structure beginning in the 2024 RA compliance year. The new structure would seek to ensure load (including energy storage charging) will be met in all hours of the day, not just during gross peak demand hours and would move RA from a monthly compliance obligation to a seasonal obligation. The details of the framework would be further fleshed out through the specified workshop process and need to be approved by the CPUC in 2022. If OhmConnect’s Petition for Modification is granted, it would allow LSEs like VCE to procure a higher percentage of demand response resources to meet its RA obligations than it is currently allowed under the RA compliance rules.
- **Next Steps:** The dates of the PG&E Slice of Day workshops, all to run from 10 a.m. to 3 p.m., are October 6, 2021, October 20, 2021 November 3, 2021, November 17, 2021, December 1, 2021, December 15, 2021, January 5, 2022, and January 19, 2022.
- **Additional Information:** OhmConnect’s [Petition for Modification](#) (September 9, 2021); [D.21-07-014](#) on restructuring the RA program with PG&E Slice of Day proposal (July 16, 2021); [D.21-06-029](#) adopting local capacity obligations for 2022-2024, flexible capacity obligations for 2022, and refinements to the RA program (approved June 24, 2021); [2019 Resource Adequacy Report](#) (March 19, 2021); [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); [D.20-06-031](#) on local and flexible RA requirements and RA program refinements (June 30, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

PG&E 2022 ERRA Forecast

Intervenor testimony was filed September 22, 2021.

- **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.

On June 1, 2021, PG&E filed its 2022 ERRA Forecast application, requesting a 2022 ERRA forecast revenue requirement for ratesetting purposes of \$4.736 billion. After accounting for \$2.479 billion of Utility Owned Generation (UOG)-Related Costs and amounts related to capped 2020 departing load PCIA rates addressed in D.20-12-038, PG&E is requesting a revenue requirement request in this application of \$2.263 billion.

PG&E preliminarily forecasts that in 2022 the system average bundled service customer rate will increase by 2.4%, the system average DA and CCA rate will decrease by 9.6%, and the departing load rate will increase by 1.7%. VCE’s customers’ PCIA rates will decrease, on average, by \$0.01872/kWh (2017 PCIA Vintage). Consistent with D.21-05-030, PG&E has removed the capping and triggering mechanisms for PCIA rates in this 2022 ERRA Forecast Application. PCIA rates for the 2009 through 2022 customer vintages include PCIA base rates, formerly referred to as uncapped PCIA rates in the 2021 ERRA Forecast Application, plus PUBA rate adders for each vintage. Proposed 2022 PCIA rates, inclusive of the PUBA adder, are shown in the table below.

TABLE 20-4
 PROPOSED POWER CHARGE INDIFFERENCE ADJUSTMENT RATES BY CLASS AND VINTAGE APPLICABLE TO POWER CHARGE
 INDIFFERENCE ADJUSTMENT -ELIGIBLE DEPARTING LOAD CUSTOMERS (WITH DWR FRANCHISE FEE)
 (\$/KWH)

| Line No. | Customer Class | 2009 Vintage | 2010 Vintage | 2011 Vintage | 2012 Vintage | 2013 Vintage | 2014 Vintage | 2015 Vintage | 2016 Vintage | 2017 Vintage | 2018 Vintage | 2019 Vintage | 2020 Vintage | 2021 Vintage | 2022 Vintage |
|----------|-------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1 | Residential | \$0.01962 | \$0.02508 | \$0.02641 | \$0.02901 | \$0.02812 | \$0.02825 | \$0.02810 | \$0.02845 | \$0.02817 | \$0.02858 | \$0.02810 | \$0.02484 | \$0.03364 | \$0.03364 |
| 2 | Small L&P | \$0.01875 | \$0.02397 | \$0.02523 | \$0.02772 | \$0.02687 | \$0.02700 | \$0.02685 | \$0.02719 | \$0.02692 | \$0.02731 | \$0.02685 | \$0.02374 | \$0.03214 | \$0.03214 |
| 3 | Medium L&P | \$0.02022 | \$0.02585 | \$0.02721 | \$0.02990 | \$0.02897 | \$0.02912 | \$0.02896 | \$0.02932 | \$0.02903 | \$0.02945 | \$0.02896 | \$0.02560 | \$0.03467 | \$0.03467 |
| 4 | B19/E19 | \$0.01880 | \$0.02403 | \$0.02530 | \$0.02780 | \$0.02694 | \$0.02707 | \$0.02692 | \$0.02727 | \$0.02699 | \$0.02739 | \$0.02693 | \$0.02380 | \$0.03224 | \$0.03224 |
| 5 | Streetlights | \$0.01563 | \$0.01998 | \$0.02103 | \$0.02311 | \$0.02240 | \$0.02250 | \$0.02238 | \$0.02266 | \$0.02244 | \$0.02276 | \$0.02238 | \$0.01979 | \$0.02679 | \$0.02679 |
| 6 | Standby | \$0.01409 | \$0.01801 | \$0.01896 | \$0.02083 | \$0.02019 | \$0.02028 | \$0.02017 | \$0.02043 | \$0.02022 | \$0.02052 | \$0.02018 | \$0.01784 | \$0.02415 | \$0.02415 |
| 7 | Agriculture | \$0.01777 | \$0.02271 | \$0.02391 | \$0.02627 | \$0.02546 | \$0.02558 | \$0.02544 | \$0.02576 | \$0.02550 | \$0.02587 | \$0.02544 | \$0.02249 | \$0.03046 | \$0.03046 |
| 8 | B20/E20 T (Excluding F | \$0.01607 | \$0.02053 | \$0.02162 | \$0.02375 | \$0.02302 | \$0.02313 | \$0.02300 | \$0.02329 | \$0.02306 | \$0.02340 | \$0.02301 | \$0.02034 | \$0.02754 | \$0.02754 |
| 9 | B20/E20 P (Excluding F | \$0.01721 | \$0.02200 | \$0.02316 | \$0.02545 | \$0.02466 | \$0.02478 | \$0.02464 | \$0.02496 | \$0.02471 | \$0.02507 | \$0.02465 | \$0.02179 | \$0.02950 | \$0.02950 |
| 10 | B20/E20 S (Excluding F | \$0.01794 | \$0.02294 | \$0.02415 | \$0.02653 | \$0.02571 | \$0.02584 | \$0.02569 | \$0.02602 | \$0.02576 | \$0.02613 | \$0.02570 | \$0.02272 | \$0.03076 | \$0.03076 |
| 11 | BEV1 | \$0.01597 | \$0.02042 | \$0.02150 | \$0.02362 | \$0.02289 | \$0.02300 | \$0.02287 | \$0.02316 | \$0.02293 | \$0.02326 | \$0.02288 | \$0.02022 | \$0.02738 | \$0.02738 |
| 12 | BEV2 | \$0.01865 | \$0.02384 | \$0.02510 | \$0.02758 | \$0.02673 | \$0.02686 | \$0.02671 | \$0.02705 | \$0.02677 | \$0.02717 | \$0.02671 | \$0.02361 | \$0.03198 | \$0.03198 |
| 13 | System Average PCIA Rate by Vintage | \$0.01886 | \$0.02411 | \$0.02539 | \$0.02789 | \$0.02704 | \$0.02717 | \$0.02702 | \$0.02736 | \$0.02709 | \$0.02748 | \$0.02703 | \$0.02391 | \$0.03231 | \$0.03231 |

The Joint CCAs protested the Application on the grounds PG&E has not demonstrated the relief it requests is just and reasonable, is in compliance with all applicable decisions, and prevents illegal cost shifts between bundled and unbundled ratepayers. Among the issues flagged in the Joint CCAs' protest are:

- The appropriateness of certain wildfire and catastrophic event costs included in PG&E's application that have yet to be approved.
- Changes to the utility's Green Tariff Shared Renewables (GTSR) program requested in a separate proceeding may have an impact on this proceeding.
- While the Joint CCAs support the intent of PG&E's proposal, this is not the appropriate proceeding to modify PG&E's non-vintage PCIA sub-account.
- PG&E's proposal to update its Application late in the proceeding to reflect a GRC Phase II decision must not circumvent the procedural rights of parties.
- The Joint CCAs will review the funds PG&E set aside for CCA Disadvantaged Community Green Tariff (DAC-GT) program and the Community Solar – Green Tariff (CS-GT) programs.
- PG&E's emergency summer 2021-2022 peak procurement costs must be consistent with the controlling commission decisions.
- **Details:** Testimony of the Joint CCAs recommends, among other provisions:
 - PG&E should correct the allocation of the gain on sale of its San Francisco headquarters across the ERRA and PCIA vintages to be consistent with the allocation of other common costs included in the PCIA.
 - The 2022 Indifference Amount and 2021 year-end PABA balance should be reduced to remove the above-market cost of solar resources used to supply PG&E's GTSR and DAC-GT programs.
 - PG&E should be required to provide Reviewing Representatives access to confidential data used in prior ERRA Forecasts as part of the existing Master Data Request.
 - PG&E's proposed transfer of the 2021 year-end ERRA balancing account balance to the latest PABA vintage should again be approved as an interim measure until this issue is resolved in the PCIA rulemaking proceeding.
 - PG&E should correct a miscalculation of the RA Charge included in its GTSR and Enhanced Community Renewables rates.
 - PG&E should be required to identify in future ERRA proceedings transactions executed by PG&E as the Central Procurement Entity 22 for Local RA and the effect of CPE procurement on the Cost Allocation Mechanism and PCIA.
- **Analysis:** This proceeding will establish the amount of the PCIA for VCE's 2022 rates and the level of PG&E's generation rates for bundled customers. The illustrative PCIA rates filed by

PG&E suggest a significant decrease in the PCIA for 2022, but these rates will change based on PG&E's November Update filing. For comparison, VCE residential customers' current (2021) PCIA charge is \$0.04760/kWh and the proposed residential PCIA rate for 2022 is \$0.02817/kWh.

- **Next Steps:** Rebuttal testimony is due October 6, 2021, a Joint Conference Statement (last day to confirm request for evidentiary hearing) is due October 7, 2021, a status conference is scheduled for October 8, 2021, the evidentiary hearing is scheduled for October 11-12, 2021, opening briefs are due October 22, 2021, reply briefs are due November 1, 2021, PG&E update is due November 8, 2021, comments on the PG&E update are due November 18, 2021, a proposed decision will be issued December 1, 2021, and a final decision is anticipated on December 13, 2021.
- **Additional Information:** [Scoping Memo and Ruling](#) (August 11, 2021); [Notice](#) of Prehearing Conference (July 15, 2021); [Application](#) (June 1, 2021); Docket No. [A.21-06-001](#).

PG&E's 2019 ERRA Compliance

On September 7, 2021, the Assigned Commissioner issued a Ruling consolidating this proceeding with SCE's and SDG&E's ERRA Compliance proceedings (A.20-04-002 and A.20-06-001, respectively).

- **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.

D.21-07-013 approved a Settlement Agreement entered by all the parties that actively participated in Phase 1 of the proceeding. The Settlement Agreement resolved all but two contested issues between the parties. For the two contested issues, D.21-07-013 found that PG&E must (1) use the same methodology approved in D.20-02-047 (2020 ERRA decision) to calculate the Retained RPS adjustment and update the RPS adjustment with actual 2019 recorded sales data, and (2) retain the same PCIA vintage years for the power purchase agreements PG&E amended in 2019.

On August 16, 2021, PG&E filed an application for rehearing of the Phase 1 decision, D.21-07-013, with respect to its direction to proceed with evaluating potential disallowances for 2019 PSPS events in a Phase II of this proceeding.

- **Details:** The Ruling consolidates the Phase 2 ERRA compliance proceedings of PG&E, SCE, and SDG&E. The issues scoped for Phase 2 are:
 - What is the appropriate methodology for calculating a utility's unrealized volumetric sales and unrealized revenues resulting from PSPS events in any given record year? Based on this methodology, what are the utilities' (PG&E, SCE, and SDG&E) unrealized volumetric sales and unrealized revenues resulting from 2019 PSPS events?
 - Whether it is appropriate for the utilities to return the revenue requirement equal to the unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2019.
- **Analysis:** This phase of the proceeding will assess whether PG&E should be required to return its revenue requirement associated with unrealized sales associated with its 2019 PSPS events, and the methodology and inputs for calculating such disallowance. VCE's customers could

benefit from such a CPUC-determined disallowance, e.g., via a bill credit or reduced PG&E charges.

- **Next Steps:** Energy Division will host a workshop on the IOU PSPS methodology on October 26, 2021. IOU Phase 2 testimony is due November 5, 2021, Intervenor Phase 2 testimony is due January 17, 2022, IOU rebuttal testimony is due February 15, 2022, and a Joint Case Management Statement is due February 25, 2021.
- **Additional Information:** [Ruling](#) consolidating ERRA compliance proceedings (September 7, 2021); [PG&E Application for Rehearing](#) of D.21-07-013 (August 16, 2021); [D.21-07-013](#) resolving Phase 1 (July 16, 2021); [Joint Motion to Adopt Settlement Agreement](#) (October 22, 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](#).

PCIA Rulemaking

On September 13, 2021, and September 22, 2021, parties filed comments in response to an August Ruling on the Energy Division staff proposal to change the issue date of the Market Price Benchmark calculations. On September 17, 2021, the ALJ issued a Ruling requesting comments on ERRA and PCIA issues, to which parties filed comments on October 1, 2021.

- **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. 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 Phase 2 Decision, D.21-05-030, addressed the recommendations of PCIA Working Group 3 and removed the cap and trigger for PCIA rate increases, authorized new Voluntary Allocation, Market Offer, and Request for Information processes for RPS contracts subject to the PCIA, and approved a process for increasing transparency of IOU RA resources. However, it did not provide unbundled customers proportional access to system and flexible RA products through the RA voluntary allocation and market offer process proposed by PCIA Working Group 3. Likewise, it declined to provide unbundled customers any access to GHG-Free energy on a permanent basis.

The CCA Parties' Application for Rehearing of D.21-05-030 challenges the Decision's rejection of the RA voluntary allocation and market offer and GHG-free energy allocation. It argues that D.21-05-030 violates Public Utilities Code Section 366.2(g), which guarantees CCA customers the full benefit of the resources for which they bear cost responsibility through the PCIA charge. While CCA customers pay for the RA and GHG-Free products in the PCIA portfolio, the Phase 2 Decision, provides only bundled customers preferential access to RA products and no access to GHG-Free energy on a long-term basis. The CCA Parties argue that since D.21-05-030 effectively requires unbundled customers to pay equally for benefits only bundled customers receive, the Phase 2 Decision also violates the Section 365.2 prohibition against cost-shifting among unbundled and bundled customers.

Details: The September Ruling requests comments in response to questions on ERRA data access, PCIA forecasting data access, confidential data consistency, year-end balances and crediting customers, and the ERRA trigger.

The Staff Proposal on which the August Ruling requested comments would move the Market Price Benchmark calculation date up by one month – from November 1 to October 1 – to allow for a “normal” proceeding schedule and enable flexibility in addressing last-minute issues. Staff’s analysis found that the effects of changes in the forecast RPS and RA adders on PCIA rates are relatively small and concluded that the largest driver of changes to PCIA rates would be the energy index.

- **Analysis:** The issues on which the CPUC is requesting comments in the September Ruling impact CCAs’ ability to gain access to confidential IOU data pertinent to the calculation and implementation of the PCIA, as well as the alignment of ERRA and PCIA proceedings.
- **Next Steps:** This proceeding remains open to consider (1) Phase 2 issues relating to ERRA proceedings and (2) whether GHG-Free resources are under-valued in the PCIA methodology, and if so, the appropriate way to address this problem.

Reply comments on the September Ruling are due October 8, 2021.

D.21-05-030 identified the following next steps:

- **January 1, 2022:** PCIA cap is removed from rates.
- **January 2022:** Once the 2021 RFIs are approved, the IOUs may request approval for Contract Assignments and Contract Modifications in response to the RFI by filing Tier 3 advice letters.
- **February 2022:** After approval of the joint methodology advice letter, IOUs will inform LSEs of their potential Voluntary Allocation shares.
- **May 2022:** IOUs and LSEs complete the process of determining interest in Allocation elections.
- **June 2022:** Each IOU confirms Voluntary Allocations and propose Market Offers in their 2022 RPS Procurement Plans. LSEs request approval for Voluntary Allocations in their 2022 RPS Procurement Plans.
- **Additional Information:** [Ruling](#) requesting comments (September 17, 2021); [Ruling](#) providing Energy Division proposal (August 25, 2021); PG&E [AL 6306-E](#) (August 23, 2021); PG&E [AL 5973-E-A](#) (August 13, 2021); CalCCA [Application for Rehearing](#) of D.21-05-030 (June 23, 2021); [D.21-05-030](#) on PCIA Cap and Portfolio Optimization (May 24, 2021); [D.21-03-051](#) granting petition to modify D.17-08-026 (March 26, 2021); [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](#).

PG&E 2020 ERRA Compliance

On September 14, 2021, the ALJ issued a Ruling cancelling the evidentiary hearing after parties resolved disputed facts. A settlement conference between parties was held September 24, 2021.

- **Background:** The annual ERRA Compliance proceeding reviews the utility’s compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the preceding year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries.

PG&E is requesting that the CPUC find it complied with its Bundled Procurement Plan (BPP) in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources for the 2020 calendar year. It also seeks a CPUC finding that it managed its utility-owned generation (UOG) facilities reasonably, although it recommends that CPUC review of outages at Diablo Canyon Power Plant related to the Unit 2 main generator be delayed to the 2021 ERRA Compliance review. Of significance to the PCIA, PG&E is requesting the CPUC find that entries in its Portfolio Allocation Balancing Account (PABA), which trues up the above-market forecast of generation resources recovered through the PCIA with actual recorded costs and revenues, are accurate.

PG&E’s procurement costs recorded across the portfolio were \$158.8 million higher than forecasted, allegedly due to higher-than-forecast RPS-eligible contracts, as offset by higher than forecast retained RPS and retained RA, as well as lower than forecast fuel costs for UOG facilities. Activity recorded in the PABA includes the following categories: Revenues from Customers, RPS Activity, RA Activity, Adopted UOG Revenue Requirements, CAISO Related Charges and Revenues, Fuel Costs, Contract Costs, GHG Costs, and Miscellaneous Costs. PG&E has redacted as confidential its 2020 actual and forecast costs for these categories, so it is unclear from the public filing what the magnitude is regarding the difference between actual and forecast costs for each category.

The Scoping Memo and Ruling specifies the proceeding will be divided into two phases. Phase 1 will address whether PG&E (1) prudently administered and managed Utility-Owned Generation facilities and QF and non-QF contracts, (2) achieved least-cost dispatch of energy resources, (3) had reasonable, accurate, and appropriate ERRA and PABA entries, and (4) administered RA procurement and sales consistent with its Bundled Procurement Plan, among other issues. Phase 2 issues may be amended based on the outcome of Phase 2 of PG&E’s 2019 ERRA compliance proceeding. The tentative list of issues include whether sales forecasting methods for adjusting revenue requirement under current decoupling policy should be adjusted to account for power not sold or purchased during a Public Safety Power Shutoff (PSPS) event in 2020, whether it is appropriate for PG&E to return the revenue requirement equal to the estimated unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2020, and the appropriate methodology for calculating PG&E’s unrealized volumetric sales and unrealized revenues resulting from 2020 PSPS events.

- **Details:** In testimony, Joint CCAs recommended a number of accounting adjustments that would reduce PUBA balances by more than \$14.3 million. They also recommend the CPUC acknowledge that PG&E’s internal audit of its PABA concluded that the processes and controls governing PABA accounting are “Not Adequate,” and that PG&E remedy the identified deficiencies. Furthermore, they recommend that the CPUC clarify that future procurement expenses incurred by PG&E acting as the Central Procurement Entity will be reviewable in ERRA Compliance proceedings, and that PG&E should demonstrate the effect of such procurement, if any, on the PABA and ERRA balancing accounts.

The JCCAs dispute four issues with respect to PG&E’s application and testimony: (1) the recovery of CAISO Tariff Section 37 sanctions of \$43,500 recorded to the PABA and of \$204,000 recorded to the ERRA; (2) the recovery of 2017 and 2018 Diablo Canyon Seismic Studies Balancing Account (DCSSBA) costs and the 2014 DCSSBA correction in the PABA; (3) the venue for review of recorded entries related to Central Procurement Entity procurement costs; and (4) the correct adjustment to the PABA for Green Tariff Shared Renewables entries.

- **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 2020. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Both issues could impact the level of the PCIA in 2022 and 2023.

- **Next Steps:** Opening briefs are due October 19, 2021, reply briefs are due November 9, 2021, and a PD is anticipated for Q1 2022.
- **Additional Information:** [Ruling](#) cancelling evidentiary hearing (September 14, 2021); [Scoping Memo and Ruling](#) (June 21, 2021); [Application](#) (March 1, 2021); Docket No. [A.21-03-008](#).

Provider of Last Resort Rulemaking

The Assigned Commissioner issued a Scoping Memo and Ruling on September 16, 2021.

- **Background:** A POLR is the utility or other entity that has the obligation to serve all customers (e.g., PG&E is currently the POLR in VCE's territory). In 2019 the Legislature passed SB 520, which defined POLR for the first time in statute, confirmed that each IOU is the POLR in its service territory, and directed the Commission to establish a framework to allow other entities to apply and become the POLR for a specific area (a "Designated POLR"). This rulemaking will implement SB 520.
- **Details:** The Scoping Memo and Ruling describes the issues that are within scope in the proceeding and the procedural schedule going forward, although most of the procedural dates currently lack specificity. Phase 1 of this OIR will address POLR service requirements, cost recovery, and options to maintain GHG emission reductions in the event of an unplanned customer migration to the POLR. Phase 2 will build on the Phase 1 decision to set the requirements and application process for other non-IOU entities (i.e., a CCA, Energy Service Provider, or third-party) to be designated as the POLR in place of an existing POLR. Phase 3 will address specific outstanding issues not resolved in Phase 1 and 2 of this proceeding.
- **Analysis:** This proceeding could impact VCE in several ways. First, in establishing rules for existing POLRs, it will address POLR service requirements, cost allocation, and cost recovery issues should a CCA or other LSE discontinue supplying customers resulting in the need for the POLR to step in to serve those customers. Second, in setting the requirements and application process for another entity to be designated as the POLR, it could create a pathway for a CCA or other retail provider to elect to become a POLR for its service area. The preliminary questions (Appendix B to the OIR) suggest these issues will include examining topics such as CCA financial security requirements, portfolio risk and hedging, CCA deregistration, CCA mergers, and CCA insolvency.
- **Next Steps:** A workshop to review the operation and expectation of POLR service, registration, and financial security requirements is scheduled for October 29, 2021. A ruling will be issued in Q4 2021 or Q1 2022 with questions to parties to comment on. Opening and reply comments will be due in Q1 2022.
- **Additional Information:** [Scoping Memo and Ruling](#) (September 16, 2021); [Ruling](#) scheduling prehearing conference (April 30, 2021); [Order Instituting Rulemaking](#) (March 25, 2021); Docket No. [R.21-03-011](#).

2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking

On September 8, 2021, the ALJ issued a Ruling requesting comments on a proposed 2022 Wildfire Fund Nonbypassable Charge. No party filed comments by the October 1, 2021 deadline.

- **Background:** This rulemaking continues to implement AB 1054, which extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The CPUC issued D.20-12-024 in December 2020 that continues the Wildfire Non-Bypassable Charge (NBC) amount of \$0.00580/kWh for January 1, 2021, through December 31, 2021. The NBC amount of 2022 and 2023 will be established in this proceeding.

- **Details:** The proposed 2022 Wildfire Fund Non-Bypassable Charge is \$0.0066/kWh, up from \$0.0058/kWh in 2021.
- **Analysis:** VCE customers will pay the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amounts established in this proceeding. The proposed charge for 2022 is increasing due to an under-collection of the revenue requirement in 2021 that has been added to the revenue requirement for 2022.
- **Next Steps:** A proposed decision will be issued in November, followed by a Decision in December. The same timeline will also apply in 2022 to establish the 2023 Wildfire Fund NBC amount.
- **Additional Information:** [Ruling](#) requesting comments on 2022 Wildfire Fund NBC (September 8, 2021); [Scoping Memo and Ruling](#) (June 8, 2021); [Order Instituting Rulemaking](#) (March 10, 2021); Docket No. [R.21-03-001](#).

PG&E Phase 1 GRC

No updates this month. In August, numerous parties, including a coalition of eight CCAs in PG&E's service territory, filed protests or responses to PG&E's 2023 Phase 1 general rate case (GRC) application. The prehearing conference was held August 30, 2021.

- **Background:** Phase 1 GRC applications cover the revenue requirement, including the functionalization of costs into categories such as electric distribution or generation, which impact which customers (bundled, unbundled, or both) pay for the costs through rates. Phase 2 GRC applications cover cost allocation (i.e., assigning costs to customer classes, such as Residential) and rate design issues. PG&E proposes to have a second and third track of this Phase 1 GRC to request reasonableness review of certain memorandum and balancing account costs to be recorded in 2021 and 2022. PG&E will file its next Phase 2 GRC application by September 30, 2021.

On August 25, 2021, the CPUC Executive Director granted PG&E's request to delay filing its next Phase 2 GRC application until September 30, 2024.

- **Details:** In their protest of PG&E's application, the Joint CCA parties identified the following list of preliminary issues they plan to examine or address in this proceeding:
 - **Compliance with the Commission's Cost Allocation Directives in D.20-12-005** (PG&E's most recently decided Phase 1 GRC decision), including PG&E's cost functionalization methodology, wildfire costs, and allocation of Customer Care costs.
 - **Reinvestments in and Recovery of Legacy Owned Generation Costs**, including solar contract renewals or the decommissioning of legacy owned assets, which impact Joint CCAs' customers through the PCIA and related vintaging of costs.
 - **Other Issues that May Require Further Investigation and Analysis**, including how costs related to PSPS Events should be tracked and allocated; whether and how any funds that PG&E receives as credits (such as Department of Energy settlement funds) should be allocated to departing load customers; and how PG&E's regionalization proposal impacts its relationship and dealings with CCAs and their customers.

In August, TURN also filed a Motion (currently pending) requesting a Ruling requiring PG&E to supplement its proposal with an alternative spending plan that limits the growth in proposed spending by the rate of inflation.

- **Analysis:** This proceeding will set the revenue requirement, and thereby ultimately impact PG&E's rates, for 2023-2026. It will establish how the revenue requirement components will be functionalized, which impact whether the ultimately approved costs will be borne by PG&E bundled customers, unbundled customers like VCE customers, or both. It will also address

numerous other issues raised in PG&E's application that could impact rates, policies, and programs implemented by PG&E.

- **Next Steps:** The next step will be the issuance of a scoping memo and ruling that will provide the list of issues within the scope of the proceeding and the procedural schedule.
- **Additional Information:** [Scoping Memo and Ruling](#) (September 15, 2021); [Ruling](#) scheduling prehearing conference (August 19, 2021); [PG&E Application](#) (June 30, 2021); Docket No. [A.21-06-021](#).

PG&E's Phase 2 GRC

No updates this month. On August 25, 2021, the Assigned Commissioner issued an Amended Scoping Memo and Ruling, extending the deadlines and schedule in this 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.

Five settlement agreements are pending. The **Revenue Allocation Supplemental Settlement Agreement** resolves all of the inter-class revenue allocation issues. Regarding bundled PCIA allocation, the parties agreed to remove PCIA at present rates before allocation and reallocate to the classes in proportion to the adopted generation allocation. The settling parties also agreed to keep in Distribution the revenues for DR programs and EV programs. The settling parties agreed to move Energy Efficiency Incentives revenues from Distribution to Public Purpose Programs and allocate them by the Equal Percentage of Total Revenue method.

The **Agricultural Rate Design Supplemental Settlement Agreement** resolves the agricultural rate design issues in this proceeding, except for the issue of a proposed bill credit for PSPS events. The settling parties agreed to the rate designs proposed by PG&E in its opening testimony, for default Schedules AG-A1, AG-A2, AG-B, and AG-C and opt-in Schedules AG-FA, AG-FB, and AG-FC, as well as the demand charge rate limiter for Schedule AG-C, the elimination of the monthly TOU meter charge, maintaining the status quo for the Optimal Billing Period Program, and Peak Day Pricing provisions. Additionally, settling parties agreed to create new optional rate Schedules AG-A3 and AG-B2 that reduce the summer off-peak energy charges below the electric bundled system average rate. The settling parties agreed that the following four issues should not be decided in this case: A new 10-year legacy TOU period, a springtime rate or balancing account adjustment, daily demand charges, and an account or demand aggregation program.

In the **Economic Development Rate (EDR) Supplemental Settlement Agreement** settling parties reached a settlement agreement to continue the EDR program with program-related rate reductions. PG&E's EDR rate reduces both the transmission, distribution, and the generation

portions of customer bills. The settlement would provide that the EDR discount should be set in a way that enables CCAs to offer comparable rates, and PG&E and Joint CCAs agreed to a collaborative process to identify and vet EDR applicants that will make it easier for CCAs to provide a generation rate reduction to CCA customers who qualify for PG&E's EDR. The rate reductions for EDR will be separated between generation and distribution amounts, with the deduction to the generation portion specified in the settlement agreement being substantially less than under the current allocation.

The **Commercial and Industrial Rate Design Supplemental Agreement** resolves Commercial and Industrial rate design issues, apart from the issue of CPUC action on the design of PG&E's transmission rates. The settling parties agreed that PG&E should set bundled PCIA initially equal to the most recent vintage PCIA, but use the adopted allocation for generation to set going forward PCIA rates. PG&E would set SOP rates to recover at least the PCIA. The tariff presentation of the PCIA for bundled generation rates would be modified as set forth in PG&E's rebuttal testimony, which proposed alternative tariff language in response to Joint CCAs' proposals.

The **Residential Rate Design Supplemental Settlement Agreement** resolves all residential rate design issues in the proceeding, including:

- The PCIA will be identified for bundled customers as a flat rate (not differentiated by season or TOU period).
 - PG&E's proposal for tiered rate levels for Schedule E-1 should be approved.
 - PG&E's proposal to keep the Schedule E-TOU-C (*i.e.*, default residential TOU rate) peak versus off-peak price differentials at their current levels until 12 months after the last cohort of PG&E's customers are migrated to default TOU rates should be approved, and future changes over the following three years are specified in the Settlement Agreement.
 - PG&E's Schedule E-ELEC should be approved, with the fixed charge set at \$15 per customer per month. Since this new E-ELEC rate requires structural changes to PG&E's billing system, PG&E anticipates that it would take at least twelve months after a final decision is issued in this proceeding before it could be programmed, tested, and implemented.
 - PG&E will host two workshops to discuss the collection of key information regarding customers who engage in electrification efforts, and the data collected will be provided to interested stakeholders and the Commission as part of a formal Measurement and Evaluation (M&E) study.
- **Details:** The Amended Scoping Memo and Ruling provides the procedural schedule for the remainder of the proceeding, including indicating that the proposed decision on all issues except for real-time pricing issues will be issued in October 2021, rather than September as previously indicated.
 - **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 revenue 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:** A proposed decision on non-RTP issues is anticipated for October 2021, with a final decision expected in November 2021. An evidentiary hearing on RTP issues is scheduled for January 24-26, 2021, followed by opening briefs in February 2022, reply briefs in March 2022, a proposed decision in June 2022, and a decision in July 2022.

- **Additional Information:** [Amended Scoping Memo and Ruling](#) (August 25, 2021); [Ruling](#) directing PG&E to provide marginal cost scenarios (June 16, 2021); [Motion](#) to adopt Commercial and Industrial Rate Design Supplemental Agreement (April 13, 2021); [Motion](#) to adopt Revenue Allocation Supplemental Settlement Agreement (April 8, 2021); [Motion](#) to adopt Agricultural Rate Design Supplemental Settlement Agreement (April 8, 2021); [Motion](#) to adopt Economic Development Rate (EDR) Supplemental Settlement Agreement (April 8, 2021); [Motion](#) to adopt residential rate design settlement (March 29, 2021); [Notice](#) of Virtual Evidentiary Hearing (March 25, 2021); [Scoping Memo and Ruling](#) (February 16, 2021); [Ruling](#) bifurcating RTP issues into separate track (February 2, 2021); [PG&E Status Report](#) (December 18, 2020); [D.20-09-021](#) on EUS budget (September 28, 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](#).

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

No updates this month. On August 18, CPUC President Batjer sent a letter to PG&E stating that she has directed CPUC staff to investigate whether to advance PG&E further within the Enhanced Oversight and Enforcement process. Previously, the CPUC issued Resolution M-4852 in April 2021, placing PG&E into Step 1 of the Enhanced Oversight and Enforcement process it established when approving PG&E's bankruptcy plan of reorganization.

- **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.

A September 4, 2020 Ruling 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.

In April 2021, the CPUC issued Resolution M-4852, placing PG&E into the first of six steps of the 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. Resolution M-4852 found that PG&E made insufficient progress toward approved safety or risk-driven investments and is not sufficiently prioritizing its Enhanced Vegetation Management (EVM) based on risk. It found that PG&E is not doing the majority of EVM work – or even a significant portion of work – on the highest risk lines.

- **Details:** President Batjer's letter to PG&E identified "a pattern of self-reported missed inspections and other self-reported safety incidents," concluding that "this pattern of deficiencies warrants the

fact-finding review.” PG&E self-reported missed inspections of hydroelectric substations, distribution poles, and transmission lines. PG&E also reported missing internal targets for enhanced vegetation management and failing to identify dry rot in distribution poles treated with Cellon coating. Many of these issues occurred in High Fire Threat District areas.

- **Analysis:** President Batjer’s letter indicates that PG&E could move further along the Enhanced Oversight and Enforcement process due to its pattern of deficiencies. The CPUC would have to issue a draft resolution (with an opportunity for parties to file comments), followed by a final resolution, to move PG&E into another step of the Enhanced Oversight and Enforcement process.
- **Next Steps:** The proceeding remains open, but there is no procedural schedule at this time.
- **Additional Information:** [Letter](#) from President Batjer to PG&E (August 18, 2021); [Resolution M-4852](#) (April 15, 2021); [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](#).

Direct Access Rulemaking

No updates this month. On August 13, 2021, CalCCA filed a response to a July application for rehearing filed by a coalition of parties supporting expansion of Direct Access, who challenged a June CPUC decision that recommended against any re-opening of Direct Access. This proceeding is otherwise closed.

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

In Phase 2, the CPUC issued D.21-06-033 recommending against any further Direct Access expansion at this time based primarily on a concern that doing so "would present an unacceptable risk to the state’s long-term reliability goals." It observed that after considering recent reliability events (i.e., the summer 2020 heat storm and resulting rolling blackouts in California and February 2021 outage event and skyrocketing electricity prices in Texas) and IRP forecasts for additional generation, expanded direct access would result in further system fragmentation that raises serious electric system reliability concerns. Further portions of the Decision:

- Observed that Direct Access providers do not have a track record of relying on long-term contracts to meet their energy needs, which could impede the development of new, needed resources.
 - Noted that allowing expansion could undermine the long-term contracts that LSEs such as CCAs have already entered (i.e., due to load migration) and make it difficult for them to enter new contracts.
 - Stated that currently, the CPUC is not able to ensure that Direct Access expansion would not increase GHG emissions and other pollutants when compared to retaining the current cap, as Direct Access providers have historically relied primarily on unspecified power and lead to a net decline in clean energy procurement.
- **Details:** In their July Application for Rehearing, parties including the Alliance for Retail Energy Markets and the Direct Access Customer Coalition argued that:
 - The CPUC broke the law and abused its discretion when it disregarded the express duties imposed on it by SB 237.

- D.21-06-033 ignored the substantial evidence in the record as it pertains to: (1) concerns about electric service provider (ESP) procurement performance and (2) the alleged threat to reliability posed by load migration due to an expansion of Direct Access is inaccurate and discriminatory.
- D.21-06-033 discriminates against non-residential customers and the ESPs that wish to serve them, thereby violating the dormant Commerce Clause of the US Constitution.
- D.21-06-033 relied on "misrepresentations of facts and speculations."

CalCCA's August response argued that:

- The CPUC's interpretation of the statute was consistent with its plain language and legislative history.
 - The Decision is supported by the findings required by statute and is also adequately supported by findings based on the entire administrative record.
 - The dormant Commerce Clause argument fails because the Decision applies equally to both in-state and out-of-state ESPs, and therefore does not unfairly discriminate against out-of-state interests.
 - The argument that the Decision discriminates against both ESPs and their customers and therefore violates their Equal Protection rights fails the "rational basis" test in that the Decision is based on the findings regarding electric grid reliability and environmental concerns.
- **Analysis:** This proceeding determined the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California. D.21-06-033 recommending against expansion of Direct Access at this time could reduce the risk of load migration from CCAs (or IOUs) to ESPs.
 - **Next Steps:** The only remaining item to be addressed in this proceeding is the Application for Rehearing.
 - **Additional Information:** [CalCCA Response](#) to Application for Rehearing (August 13, 2021); Application for Rehearing of [D.21-06-033](#) (July 29, 2021); [D.21-06-033](#) recommending against direct access expansion (approved June 24, 2021); [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 PFMs 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](#).

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 |
| POLR | Provider of Last Resort |
| 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 10

TO: Board of Directors
FROM: Rebecca Boyles, Director of Customer Care & Marketing
SUBJECT: Customer Enrollment Update (Information)
DATE: October 14, 2021

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of October 6, 2021.

Item 10 - Enrollment Update

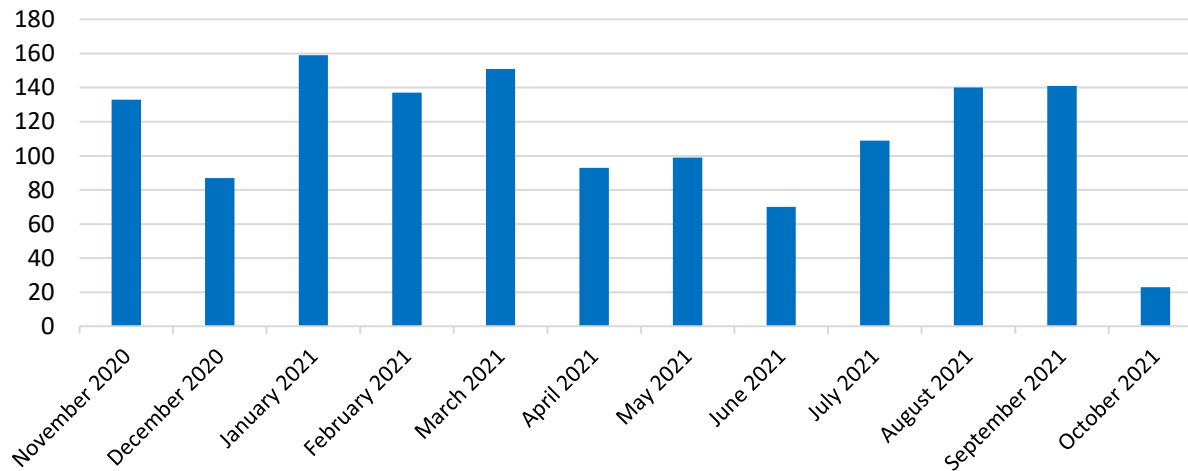
| | Davis | Woodland | Winters | Yolo Co | Total | Residential | Commercial | Industrial | Ag | NEM | Non-NEM |
|---------------------------|--------|----------|---------|---------|--------|-------------|------------|------------|-------|--------|---------|
| VCEA customers | 27,865 | 20,662 | 2,477 | 10,789 | 61,793 | 53,736 | 6,078 | 7 | 1,884 | 10,388 | 51,405 |
| Eligible customers | 29,125 | 23,701 | 2,760 | 12,333 | 67,919 | 58,973 | 6,685 | 7 | 2,150 | 11,428 | 56,491 |
| Participation Rate | 96% | 87% | 90% | 87% | 91% | 91% | 91% | 100% | 88% | 91% | 91% |

There are currently 70 Winters customers not included in this table. NEM will enroll throughout 2021.

% of Load Opted Out

| Residential | Commercial | Industrial | Ag | Total |
|-------------|------------|------------|-----|-------|
| 10% | 9% | 0% | 12% | 10% |

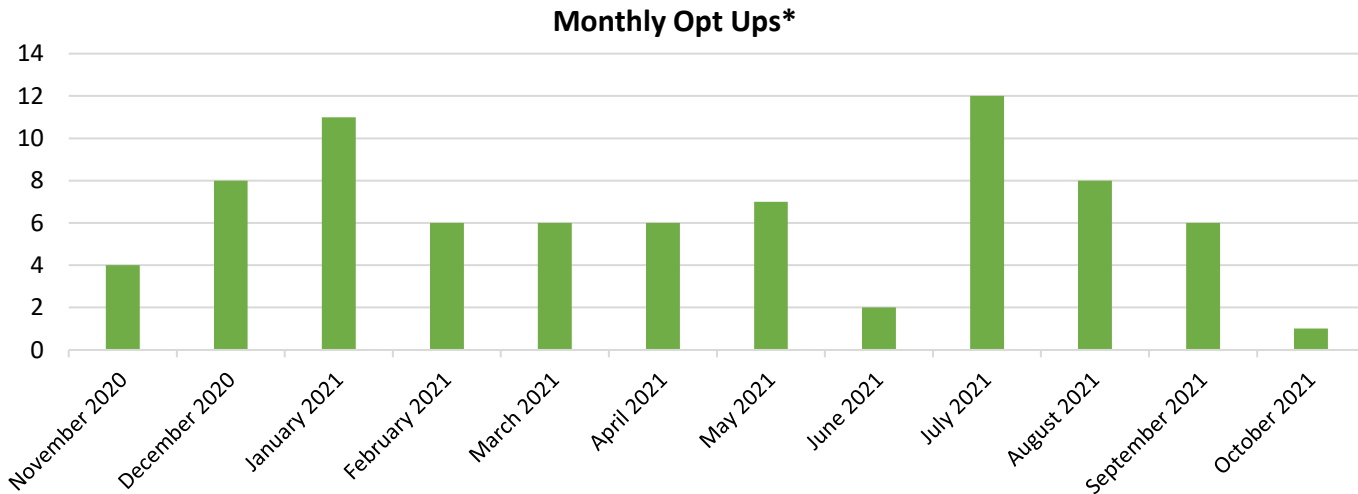
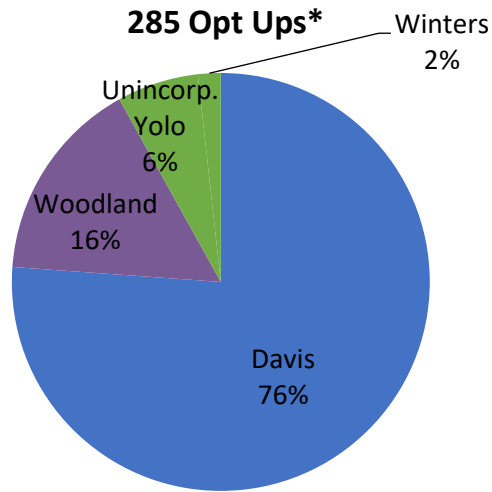
Monthly Opt Outs



Status Date: 10/6/21



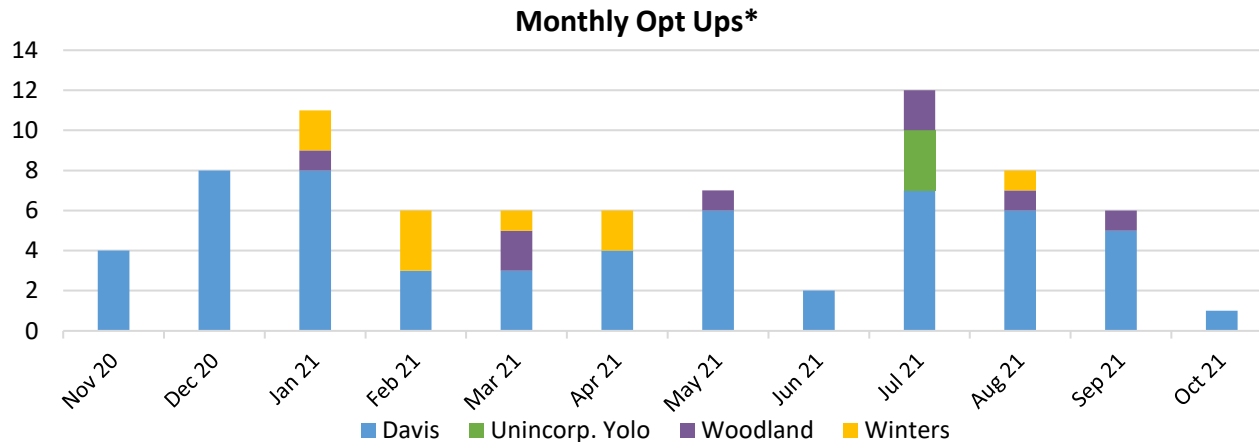
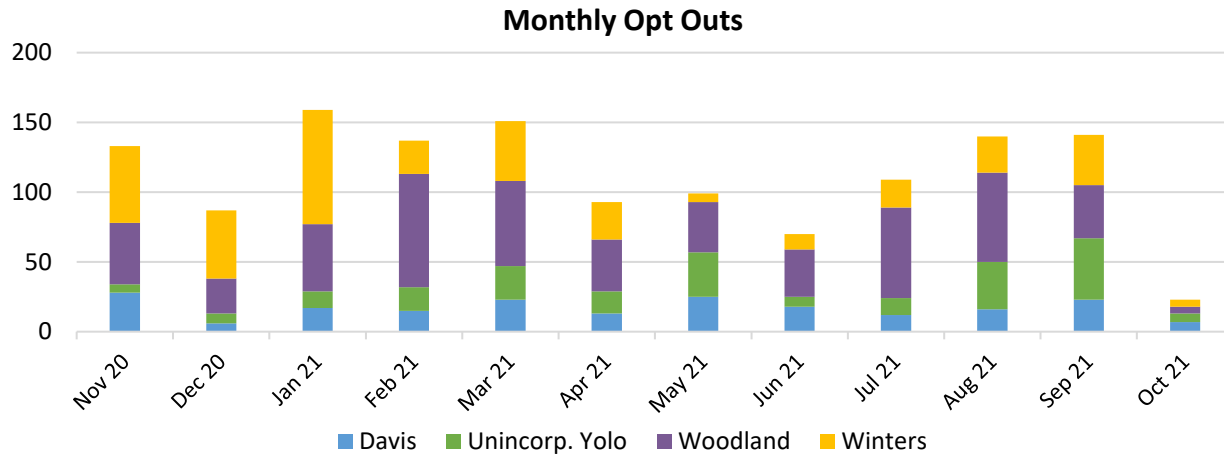
Item 10 - Enrollment Update



* The numbers in the pie chart represent opt ups for customers who are currently enrolled. The numbers in the bar graph represent opt up actions taken regardless of current enrollment status.



Item 10 - Enrollment Update

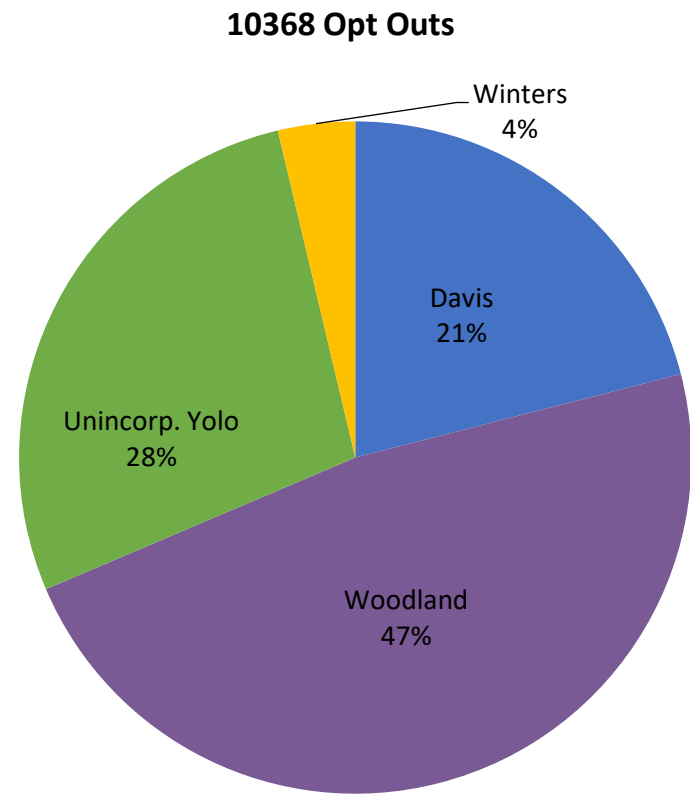
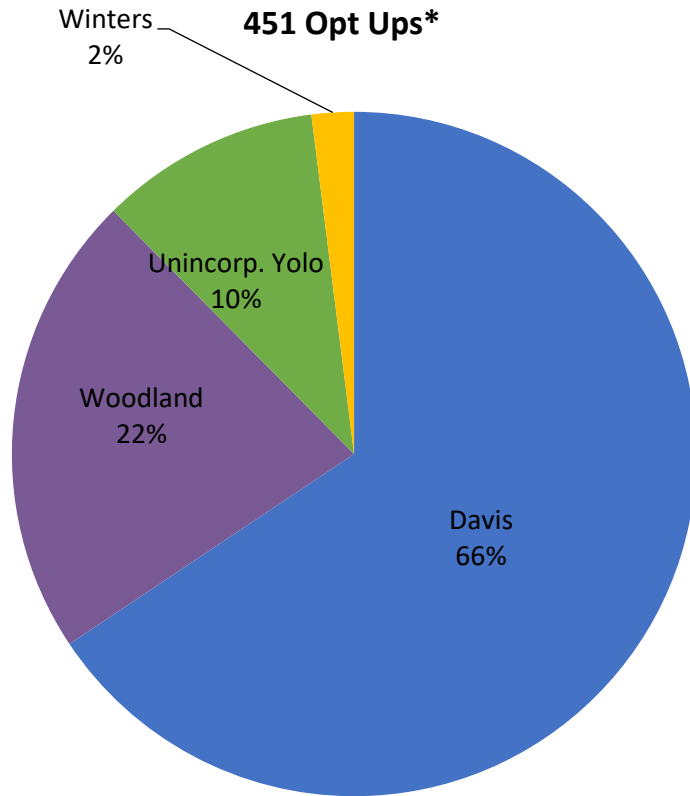


* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

Status Date: 10/6/21



Item 10 - Enrollment Update



* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee September 23, 2021 Meeting Summary

DATE: October 14, 2021

This report summarizes the Community Advisory Committee’s meeting held via Zoom webinar on Thursday, September 23, 2021.

- A. Customer Dividend and Programs Allocation report.** The CAC received a brief information report on Customer Dividend and Programs Allocation for FY 2020/21, wherein the CAC was informed that no cash reserve allocation will be contributed to customer dividends and the local program reserves due to the net margin not meeting the threshold (profitability) to allocate reserves.
- B. Legislative End of Session update.** The CAC received a verbal update from Mark Fenstermaker, Pacific Policy Group, on the end of the legislative session, including major impacts on the session such as COVID 19 restrictions that resulted in bill limitations and the budget excess negotiations. An update on the status of several legislative bills including SB 612, SB 99 and AB 843 was provided.
- C. Operating Budget update.** The CAC received an Operating budget update for the FY 2020/21 and FY 2021/22, including an overview of key factors, such as COVID-19 impacts, regulatory decisions related to PCIA and RA, power prices, load impacts (including impacts of heat storms and drought impact on pumping), fiscal year and budget adoption timing, and current VCE rate policy, which have all influenced VCE Operating budget results.
- D. Receipt of report and provide feedback on expanded and cost-recovery based customer rate structure and other potential cost-recovery concepts.** The CAC was provided a copy of Staff’s report to the Board dated September 9, 2021, outlining additional detail on an expanded and cost-recovery based customer rate structure policy option. Staff sought feedback on a rate structure policy option considered by the Board at its September meeting and to solicit other potential options from the CAC. After a thorough discussion, the CAC asked that Staff:

 - 1. Provide more information/thoughts about impacts to the load forecast, including agriculture and climate change and how load impacts could be addressed/estimated in the future;
 - 2. More information needs to be provided on the costs of the different rate options; and,
 - 3. How the power content label and RPS of our power will be impacted.

It was also agreed that the Rates Task Group should remain engaged on this topic. Staff will be seeking a recommendation from the CAC at their October meeting, for the Board’s November 10th special meeting.

- E. **Outreach Task Group update.** CAC Member and Chair of the Outreach Task Group Mark Aulman provided a verbal report with slides on the Task Group's activities, including successes, lessons learned, and work that still needs to be accomplished.

- F. **Restructuring the CAC discussion.** The CAC was informed that the Board at their September meeting adopted a revised CAC structure with 8 members (2 each per jurisdiction), and 3 additional seats for At-Large members. Staff sought feedback and assistance from the CAC defining the categories of expertise for at large members for the CAC. CAC Members suggested adding descriptors of energy sector, financial, and local energy services (small businesses).

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Edward Burnham, Director of Finance & Internal Operations

SUBJECT: Customer Dividend and Programs Allocation Report

DATE: October 14, 2021

RECOMMENDATIONS

Informational Report

OVERVIEW

The Board adopted the VCE Rate Structure & Dividend Program Guidelines on June 17, 2019, to be effective starting at the beginning of the following fiscal year on July 1, 2019. FY 2020/21 actuals resulted in a total net loss of \$3.5M for the fiscal year ending in June. The annual net margin loss of \$3.5M for FY 2020/21 did not meet the threshold (profitability) to allocate reserves to customer dividend(s) and the local program reserve.

The Board adopted FY 2020/21 and FY2021/22 budgets included anticipated losses to support rate stabilization as per VCE Rates Policy to match PG&E generation rates. The FY2021/22 budget includes \$135K from existing local program reserves, leaving a balance of \$90K for future programs.

CONCLUSION

No cash reserve allocation will be contributed to customer dividends and the local program reserve.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Board of Directors

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

SUBJECT: Willow Springs Solar 3 LLC Power Purchase Agreement Approval

DATE: October 14, 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 15 years of the Willow Springs Solar 3 project under development by Leeward Renewable Energy (Leeward).
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

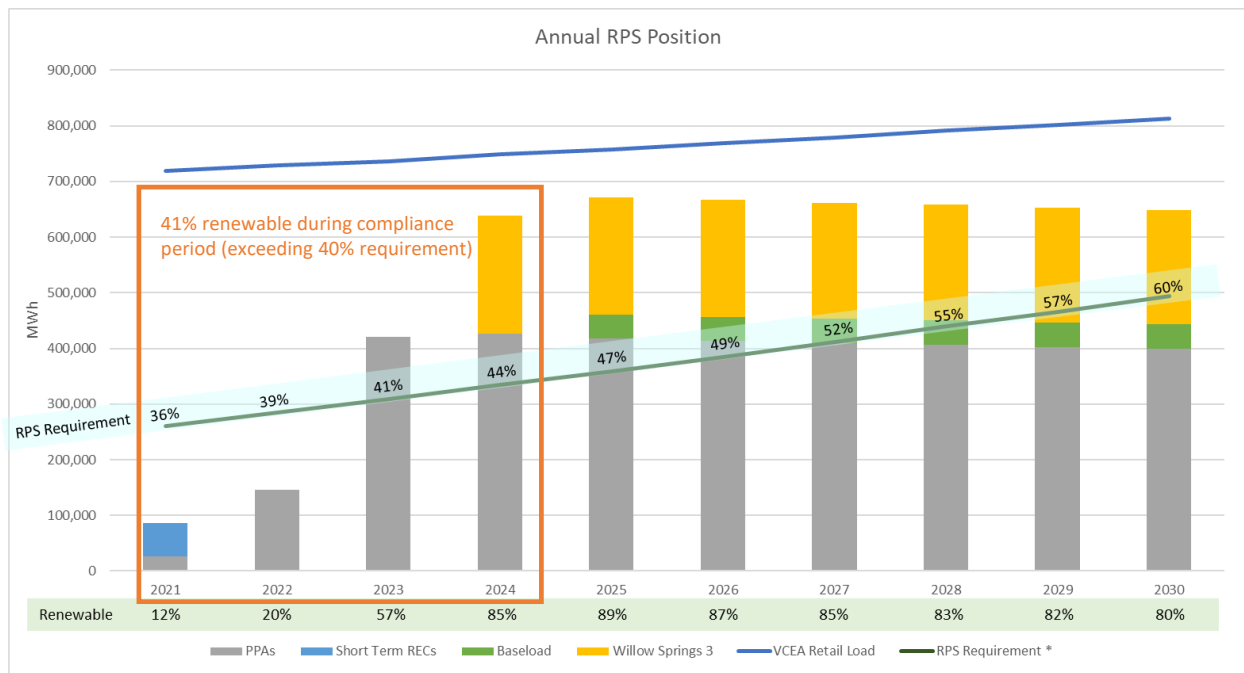
There are several drivers that support the addition of this PPA into the VCE portfolio. At the June 2021 VCE Board meeting the Board adopted a budget that was based on a plan to transition from short-term power purchases into longer term PPAs. This plan, which provides near-term budget relief and long-term fiscal stability, considers a lower renewable portfolio content in years 2021 and 2022 followed by higher content beginning in year 2023 and beyond (see below chart). This approach allows VCE to meet the California Public Utility Commission (CPUC) Renewable Portfolio Standard (RPS) Compliance Period 4 ('21-'24 avg of 40%) while significantly exceeding the mandate in Compliance Period 5 ('25-'27) and Compliance Period 6 ('28-'30).

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The second significant driver was a recent CPUC action. CPUC Decision 21-06-035 has obligated load serving entities to procure 11.5GW of new generation. This new capacity must be satisfied by a variety of resources, but it has had an effect on the market as demand has increased thus putting buyers at a disadvantage. Staff felt this was an additional reason to quickly engage the development community to see if any projects were available that meet VCE’s capacity and timing. The final reason staff moved now rather than later is associated with the broader global supply chain pressures. Staff hearing from developers, including some that VCE has already contracted with, the outside price pressures are real and are not going away anytime soon. Staff believes that given these key factors it was advisable to pursue a project that solved many of the uncertainties that occur when developing a large-scale renewable project.

Staff recognized these drivers and actively engaged the renewable development community to assess viable projects from reputable developers. Compliance is a critical driver so finding projects that could contribute to Compliance Period 4 ('21-'24 avg of 40%), was paramount as well as projects that had many of the traditional development uncertainties such as permitting and interconnection resolved were essential. Several PV+storage CAISO interconnected (in-state and out-of-state) opportunities ranging in size from 50-100 MW were considered. After conducting evaluations with the assistance of SMUD, the PV+storage proposal from Leeward offers the most value to VCE customers.

COUNTERPARTY

Leeward Renewable Energy is a leading, long-term owner and operator focused on delivering clean, sustainable wind, solar and energy storage projects. The company owns and operates a portfolio of 21 renewable energy facilities across nine states, totaling about 2,000 megawatts (MW) of installed capacity. Leeward has strong financial backing from OMERS Infrastructure, a prominent global infrastructure investor. OMERS Infrastructure, an investment arm of OMERS,

is one of Canada's largest defined benefit pension plans with C\$114 billion in net assets (as of June 30, 2021) and over 20 years of experience in the renewable energy industry.

Leeward's team of experienced industry veterans is driving an aggressive, high-growth strategy. The company is actively developing new wind, solar and energy storage projects across the U.S., with about 20 gigawatts (GW) of projects under development, spanning across 100 projects. Including projects currently under construction and those soon to commence construction, the company expects to have an additional approximately 1,500 MW of renewable energy projects in operation by the end of 2023. Leeward appears to be well positioned for continued growth of its operating asset platform, ensuring the company's position within the renewable energy industry.

In the state of California, Leeward owns and operates two wind assets and has three solar-plus-storage projects in development across three counties. Leeward has executed long-term contracts for renewable energy supply with several of California Community Choice Aggregators (CCAs) including Silicon Valley Clean Energy, Peninsula Clean Energy, and Central Coast Community Energy for solar and storage.

Leeward will develop, own and operate the Willow Springs 3 solar project, one of three projects in California's Antelope Valley.

PROJECT DESCRIPTION

When considering the viability of projects, VCE considers criteria such as counterparty experience, permitting status, environmental/land usage, and interconnection status. The Willow Springs 3 solar project will consist of a 72 MW PV field combined with a 36 MW (144 MWhs) lithium-ion battery storage system. The counterparty, Leeward, has a proven track record as mentioned above. Several other development risks have been addressed such as the project has secured all real estate rights for all aspects of the project development, the conditional use permit was obtained from Kern County in April, 2016. According to the information provided by the project developer, the site has not been actively farmed since 2009 due in part to a lack of availability of groundwater in the Antelope Valley. The environmental analysis for the project found that the site did not have long-term viability for farmland use and is therefore not classified as Prime Farmland. Environmentally, the site is fallow abandoned farmland with no wetlands, biological or cultural issues, and Leeward has a head start on the interconnection. Leeward has in place a signed interconnection agreement and will be using existing transmission infrastructure.

Beginning at the end of 2023, VCE will receive approximately 27% of its annual needs from the renewable facility for 15 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 and local sustainability fund that will be paid for by Leeward and will be distributed as directed by the VCE Board.

CONCLUSION

Staff believes the 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 Leeward meets that criteria.

Attachments

1. Attachment A – Willow Springs Solar 3 LLC Power Purchase Agreement
2. Resolution - Willow Springs Solar 3 LLC Power Purchase Agreement

Attachment A

Willow Springs Solar 3 LLC Power Purchase Agreement

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Willow Springs Solar 3, 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 72 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 36 MW AC / 144 MWh located in Kern County, California, as described further in Exhibit A.

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Execute Interconnection Agreement | Complete |
| Procure Major Equipment | August 1, 2022 |
| Obtain Conditional Use Permit | Complete |
| Guaranteed Construction Start Date | January 15, 2023 |
| Obtain Full Capacity Deliverability Status | December 31, 2023 |
| Guaranteed Commercial Operation Date | December 31, 2023 |

Delivery Term: fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | ██████████ |
| 2 | ██████████ |
| 3 | ██████████ |
| 4 | ██████████ |
| 5 | ██████████ |

| | |
|----|----------|
| 6 | ████████ |
| 7 | ████████ |
| 8 | ████████ |
| 9 | ████████ |
| 10 | ████████ |
| 11 | ████████ |
| 12 | ████████ |
| 13 | ████████ |
| 14 | ████████ |
| 15 | ████████ |

Aggregate Capacity: 108 MW of total Facility capacity

Guaranteed Storage Capacity: 36 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 72 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|----------------------|-----------------------------------|
| 1 | ████████ |
| 2 | ████████ |
| 3 | ████████ |
| 4 | ████████ |
| 5 | ████████ |
| 6 | ████████ |
| 7 | ████████ |
| 8 | ████████ |

| | |
|----|------------|
| 9 | [REDACTED] |
| 10 | [REDACTED] |
| 11 | [REDACTED] |
| 12 | [REDACTED] |
| 13 | [REDACTED] |
| 14 | [REDACTED] |
| 15 | [REDACTED] |

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|----------------|
| 1 – 15 | [REDACTED] |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--------------|
| 1 – 15 | [REDACTED] |

Product

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

Scheduling Coordinator:

Prior to Commercial Operation Date: Seller

From Commercial Operation Date through the Delivery Term: Buyer

Security:

Development Security: [REDACTED]

Performance Security: [REDACTED]
[REDACTED]

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Exhibits:

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| Exhibit F-2 | Form of Monthly Expected PV Energy Report |
| Exhibit F-3 | Form of Monthly Expected Available Effective Storage Capacity Report |
| Exhibit F-4 | Form of Monthly Expected Available Storage Capability Report |
| Exhibit G | Guaranteed Energy Production Damages Calculation |
| Exhibit H | Form of Commercial Operation Date Certificate |
| Exhibit I-1 | Form of Installed Capacity Certificate |
| Exhibit I-2 | Form of Effective Storage Capacity Certificate |
| Exhibit J | Form of Construction Start Date Certificate |
| Exhibit K | Form of Letter of Credit |
| Exhibit L | [Reserved] |
| Exhibit M | Form of Replacement RA Notice |
| Exhibit N | Notices |
| Exhibit O | Storage Capacity Tests |
| Exhibit P | Annual Storage Capacity Availability Calculation |
| Exhibit Q | Operating Restrictions |
| Exhibit R | Metering Diagram |
| Exhibit S | [Reserved] |
| Exhibit T | CPM Adjustment Factor |

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____ (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 _____

_____ or (b) the right to direct the policies or operations of such Person.

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Ancillary Services**” means any 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 such service 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 the 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), Buyer or the SC for the Generating Facility (i) did not submit a Self-Schedule or Energy Supply Bid for the MWhs subject to the reduction; or (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or (iii) submitted a Self-Schedule for less than the full amount of Energy forecasted in accordance with Section 4.3.

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 delivery of 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 delivery of 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, 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 Balancing Authority Area**” has the meaning set forth in the CAISO Tariff.

“**CAISO Certification**” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all 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 Commercial Operation**” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“**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, sold or conveyed 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 any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more [REDACTED] 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 [REDACTED] 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 instruction to charge the Storage Facility pursuant to a 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 [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 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.

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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

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

(a) CAISO orders, directs, alerts, or provides notice to a Party 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 full amount of Energy forecasted in accordance with Section 4.3 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.

“**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 [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 [REDACTED]

“**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 [REDACTED]

“**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 shall 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 the Facility, 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 the CAISO Tariff, 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 instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, and 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 Storage Capacity” means the lesser of (a) P_{MAX}, 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 the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility, in each case as applicable.

“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 In” means all Energy delivered into the Storage Facility (not including Energy metered into the Storage Facility when not subject to a Charing Notice) measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

“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, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

“Energy Supply Bid” has the meaning given in the CAISO Tariff.

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

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

“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 PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.

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

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

“Forced Facility Outage” has the meaning given in the CAISO Tariff.

“Forced Labor” has the meaning set forth in Section 13.4(c).

“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, or means deliverability equivalent to FCDS under applicable CAISO Tariff provisions.

“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 the CAISO and CPUC; *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; and (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.

“**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 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 a Person whose identity is approved by Buyer in its reasonable discretion and who issues a Guaranty pursuant to this Agreement.

“Guaranty” means a guaranty in form and substance reasonably satisfactory to Buyer and issued by a Person that has a Credit Rating of [REDACTED] or better from S&P or [REDACTED] or better from Moody’s.

“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, and/or Discharging Energy, as applicable, 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 commencement of Trial Operations (as defined in the CAISO Tariff).

“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 (i.e., measured at the Generating 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.

“Installed Storage Capacity” means the Effective Storage Capacity that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

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

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the 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 by the Facility to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 72 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, (c) participating in a lease financing (including a sale leaseback or

leveraged leasing structure) with respect to the Facility and/or (d) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto as Development Security or Performance Security.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED] from S&P or [REDACTED] 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” has the meaning set forth in the CAISO Tariff.

“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.

“Major Equipment” means solar panels, batteries, main power transformer, medium voltage transformers, inverters, and the monitoring and control system to be installed at the Facility.

“Material Permit” means the conditional use permit for the Facility issued by Kern County.

“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.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is [REDACTED]

“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 restrictions, 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 Transferee**” means (a) any [REDACTED]

“**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 debt incurred 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 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.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“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 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer was less than the Qualifying Capacity of the Facility for such month (including any month during the period

between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility's Net Qualifying Capacity or any Replacement RA, 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.

“Recapture Period” means the period of time ending on the date this is [REDACTED]

“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, [REDACTED]

“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 Flexible Capacity and 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy 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.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

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

“Scheduled Energy” means the PV Energy, Charging Energy and/or Discharging Energy, as applicable, reflected in a 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 Liability Limitation**” has the meaning set forth in Section 11.9.

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

“**Settlement Amount**” means the

[REDACTED]

“**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*, any such update to the Site that includes a different Delivery Point than is described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**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 that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

“**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.

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

“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 PTC, 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).

“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 [REDACTED] provided that after a Change of Control of Seller where [REDACTED] owns, directly or indirectly through one or more intermediate entities, [REDACTED] of the outstanding equity interests in Seller, [REDACTED] shall be the Ultimate Parent for all purposes hereunder.

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

“**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**”).

(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.

Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator; provided that if the foregoing clause is not satisfied because of Buyer's (or its designated agent's) actions or failure to take actions, and this is the only requirement for Commercial Operation that has not been achieved, Seller shall be entitled to a day-for-day extension to the Guaranteed Commercial Operation Date for such Buyer (or its designated agent) actions or failure to take actions.

2.3 **Development; Construction; Progress Reports.**

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the construction of the Facility is complete and the Facility has commenced selling power into the CAISO market, 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. After construction of the Facility is complete and the Facility has commenced selling power into the CAISO market, Seller's obligation to provide a monthly Progress Report shall end, and Seller shall instead provide prompt Notice to Buyer of the occurrence of any events that are reasonably likely to result in a delay to the Commercial Operation Date. 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 offer, bid, re-sell or use for another purpose all or a portion of the Product after the Delivery Point and retain and receive any and all related revenues, provided that no such offer, bid, re-sale or use shall relieve Buyer of any obligations hereunder. The Parties acknowledge that it is anticipated that the Facility will be constructed and completed substantially in advance of the Guaranteed Commercial Operation Date and that prior to the Delivery Term, Seller may market Energy and other attributes from the Facility to another buyer.

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 and subject to Section 3.12, 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, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

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*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **[Reserved]**.

3.7 **Capacity Attributes**.

Seller shall request Full Capacity Deliverability Status for the Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(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 Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits 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 the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least [REDACTED] Business Days before the applicable Showing Month for the purpose of including in Buyer's RA Compliance Showing for such Showing Month.

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.

RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to

[REDACTED]

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; *provided*, that if notwithstanding Seller's diligent efforts Seller has not obtained final CEC Certification and Verification within such period, then for up to an additional one hundred eighty (180) days Buyer will compensate Seller for PV Energy at the lower of (i) the Renewable Rate and (ii) the Day-Ahead LMP until Seller obtains final CEC Certification and Verification; *provided, further* that Seller's failure to obtain final CEC Certification and Verification by the date that is one year after the Commercial Operation Date shall be an Event of Default. 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 or Generating Facility, as applicable, 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 or Generating Facility's, as applicable, 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 [REDACTED] (“**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 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 after the Recapture Period, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including discussions regarding (a) the use of grid energy to provide Charging Energy to commence after the Recapture Period, and (b) the addition of a second CAISO Resource ID such that each of the Generating Facility and Storage Facility will have separate CAISO Resource IDs; *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 (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) 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. Upon the Commercial Operation Date and thereafter during the Delivery Term, 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 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-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 / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to Forced

Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the 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 charge or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the amount of such charges and/or penalties.

(g) CAISO Tariff Requirements. To the extent the Facility is considered a Variable Energy Resource under the CAISO Tariff, Seller shall comply with such obligations for Variable Energy Resources as are applicable to the Facility 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, (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 Operating 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 operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time 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 methodologies applicable to the Facility 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 methodologies applicable to the Facility, 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. 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. During the Recapture Period the Storage Facility shall be charged using only PV Energy and shall not be charged using energy from the CAISO Grid. Buyer, in its role as Scheduling Coordinator, shall use commercially reasonable efforts and cooperate with Seller to prevent a CAISO-directed order to use energy from the CAISO Grid to charge the Storage Facility during the Recapture Period.

(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.

(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), 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 4.5(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, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility, and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility shall be for Seller's account. Upon the Commercial Operation Date, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account.

(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 used to serve Station Use during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy to serve Storage Facility auxiliary load during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Seller may supply Station Use from the Facility to the extent allowed under applicable Law and distribution utility tariff, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.6 Reduction in Energy 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. Seller shall use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched. 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.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the maintenance schedule developed pursuant to Section 4.6(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(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 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, [REDACTED]

[REDACTED] 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 [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 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 reduced for purposes of calculating the YTD Annual

Storage Capacity Availability to the extent of such inability or failure multiplied by [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, 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] 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.

(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**"). 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 [REDACTED] 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 Deficient Month is caused solely by an error or omission of WREGIS, such circumstance shall not be a WREGIS Certificate Deficit, and the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 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 shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, and (ii) provide that any discretionary allocation of curtailment of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, include any other generating or energy storage facilities not included in the Facility but using Shared Facilities within the Facility's CAISO Resource IDs. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

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 single CAISO Resource ID and a separate Generating Facility Meter and Storage Facility Meter. Meters shall be installed and maintained at Seller's cost and shall be consistent with the metering diagram set forth as Exhibit R. Seller shall measure the following using CAISO-approved meters and CAISO-approved methodologies: the amount of Facility Energy produced by the Facility; the amount of PV Energy produced by the Generating Facility; the amount of Charging Energy and Discharging Energy. 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 (or from the Generating Facility to the Storage Facility in the case of Charging Energy) in a manner compliance with the CAISO Tariff. The CAISO Approved Facility Meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. Seller shall separately meter or account for all Station Use. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event 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 Operational Meter Analysis and Reporting (OMAR) web 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.

Seller shall test the Generating Facility Meter and Storage Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more [REDACTED] 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 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 within thirty (30) days after Buyer's receipt of each invoice; *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), [REDACTED] (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.**

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

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 [REDACTED] days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.**

To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, 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). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

8.9 **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]

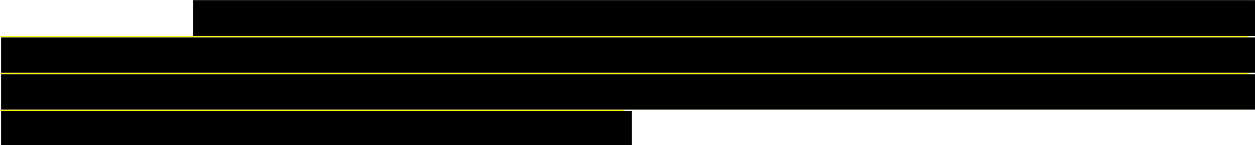
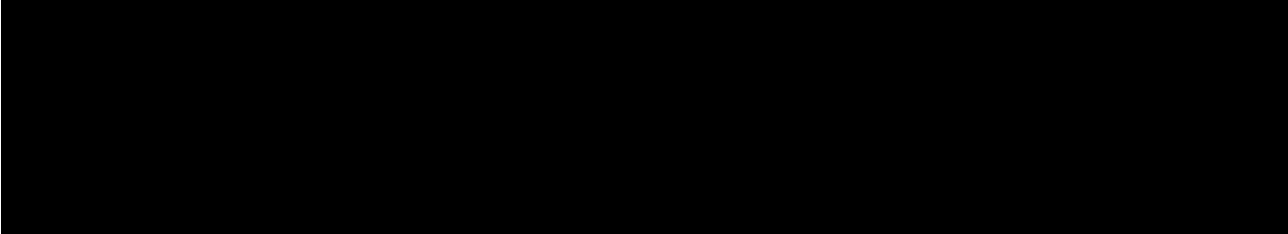
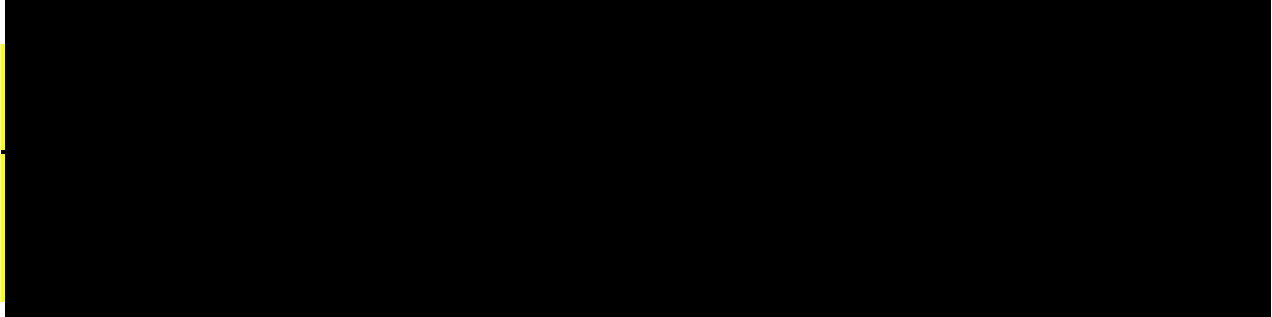
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**ARTICLE 9
NOTICES**

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 commercially 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; pandemic (including shutdowns, lockdowns, capacity limitations, supply disruptions, and similar measures that prevent or delay construction of the Facility or prevent Seller from being able to deliver Facility Energy to the Delivery Point); 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 the non-claiming Party may terminate this Agreement upon Notice to the other Party. If the non-claiming Party fails to terminate this Agreement within three (3) months thereafter, then the claiming Party may terminate this Agreement provided the claiming Party has used commercially reasonable efforts to overcome such Force Majeure Event. 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 five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (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 during the Delivery Term, 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 on or before 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;

[REDACTED]

[REDACTED]

(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 as required pursuant to Section 8.8 in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) 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 [REDACTED] by S&P or [REDACTED] 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; or

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

(vii) with respect to any Guaranty provided by Seller for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a substitute Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by Seller's Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the 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 in the definition of Guarantor;

(E) the failure of Seller's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder;

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the Guaranty; or

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) Subject to Section 15.2, 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;

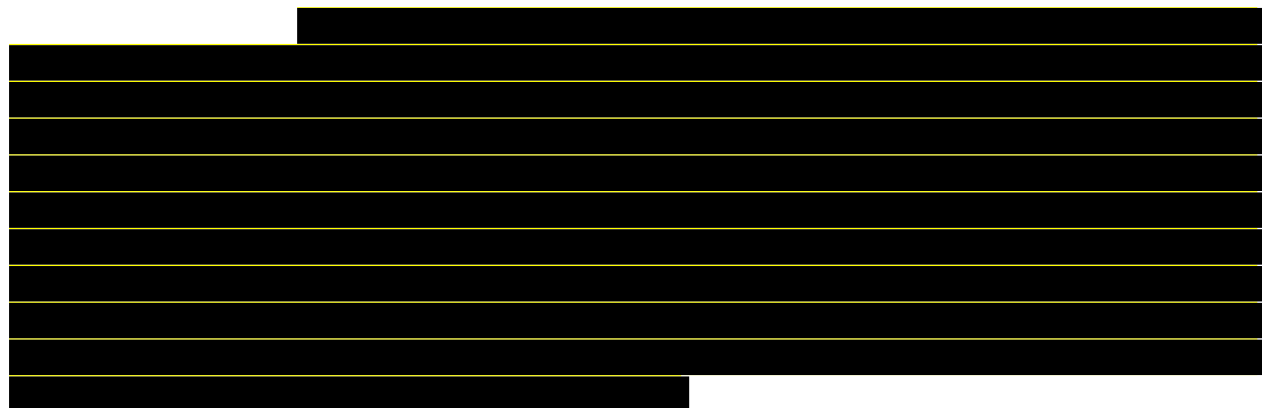
(d) to suspend performance; and

(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*, 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).



(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), reasonably calculated by Seller pursuant to Section 11.3(b). The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; for clarity, Seller's lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses. There will be no amount owed to Buyer.

(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 and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount 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; for clarity, Seller's lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses. 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 entering into the agreement to sell such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor

Seller's Affiliates may sell or transfer the 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.

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 Liability Limitations.

[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 3.8, 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 Delaware 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.

(f) As of the Effective Date, neither Seller nor its Affiliates have received written notice from any supplier or service provider that COVID-19 (including any shutdowns, lockdowns, capacity limitations, supply disruptions, and similar measures associated therewith) has caused a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility.

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 and Local Sustainability.**

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 in Kern County and Yolo County, which includes engaging a skilled and trained workforce and targeted hires and supporting local sustainability efforts. 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 and 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, as determined in publicly-held board meetings. 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. “Local” for purposes of this Section 13.4 shall mean Kern County and Yolo County.

13.5 **Prohibition on Use of Forced Labor.**

Seller represents and warrants that it will undertake commercially reasonable efforts to avoid utilizing equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”).

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*, that a Change of Control of Seller shall not require Buyer’s consent if the entity that subsequently owns, directly or indirectly through one

or more intermediate entities, more than [REDACTED] in Seller is a Permitted Transferee. 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, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**") and any requested estoppel certificates, including those as may be requested pursuant to Section 14.4. The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received Notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(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 Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of Notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of

Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date being capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(h) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this 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 meets the definition of Permitted Transferee; and

(i) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(g), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof and, promptly after Lender's written request, Buyer shall enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, which written request must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of

Permitted Transferee.

14.3 **Permitted Assignment by Seller.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to 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

(c) 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 confirmed by Buyer.

14.4 **Tax Equity Investment; Shared Facilities; Portfolio Financing.**

In addition to Buyer's obligations with respect to a collateral assignment pursuant to Section 14.2, 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 tax equity investment, financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller and with any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further estoppels, certificates, opinions, 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 will 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 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. For clarity, a Party may not terminate this Agreement during the above-referenced, informal resolution period, so long as the other Party is in compliance with this Section 15.2.

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 [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 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 less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction 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) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case with limits determined appropriate by Seller consistent with Prudent Operating Practice. All subcontractors shall name 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 cancellation or termination of coverage (except cancellation due to non-payment of premiums which shall be ten (10) days prior notice). Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(h) Failure to Comply with Insurance Requirements. If Seller fails to 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 provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial 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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for

taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, 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.

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 or the Resource Adequacy Rulings 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.

WILLOW SPRINGS SOLAR 3, LLC

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Willow Springs Solar 3

Site includes all or some of the following APNs:

- 359-052-31 (f/k/a 359-052-02)
- 359-031-57 (f/k/a 359-031-03)
- 359-031-04
- 359-031-05
- 359-031-06

City: Rosamond

County: Kern

Zip Code: 93560

Latitude: 34.8462753498585

Longitude: 118.315476857643

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 72 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 36 MW AC / 144 MWh located at the Site depicted on the attached Site diagram.

Delivery Point: Pnode (as specified below)

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: WIRLWIND_2_B1

Transmission Provider: Southern California Edison

Site Diagram:

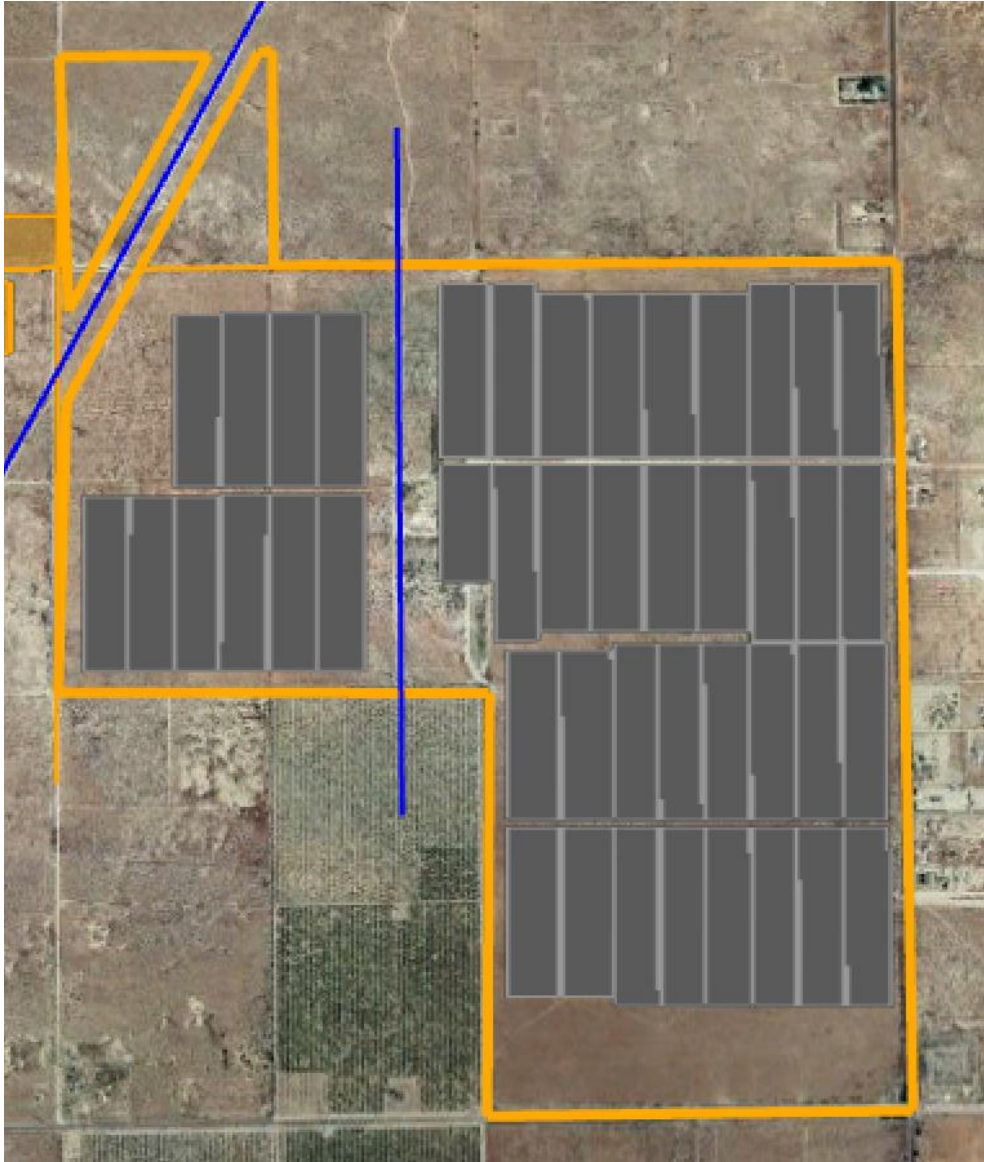


Exhibit A - 2

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.** “**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 contractors and ordered all essential 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.
 - a. 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 [REDACTED] of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed [REDACTED].
[REDACTED] Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.
2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).
 - 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 sixty (60) days of extensions by such payment of Commercial Operation Delay Damages, subject to the Seller Liability Limitation. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date, subject to the Seller Liability Limitation. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).
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 the Material Permit by the Guaranteed Construction Start Date 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 one hundred twenty (120) days, for any reason, including a Force Majeure

Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages, subject to the Seller Liability Limitation, and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days. 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 [REDACTED] Guaranteed PV Capacity, Seller shall have [REDACTED] 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]

- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than [REDACTED] of the Guaranteed Storage Capacity, Seller shall [REDACTED] 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) [REDACTED] 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]

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. Seller's payment of PV Capacity Damages and/or Storage Capacity Damages shall be Buyer's sole remedy for Seller's failure, after Commercial Operation, to achieve [REDACTED] of the Guaranteed PV and/or Guaranteed Storage Capacity.

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, subject to [REDACTED]

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

[REDACTED]

[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 [REDACTED] 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.

(a) 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.

(b) 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 [REDACTED]

[REDACTED] 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 x 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 [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 [REDACTED] of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}} * [REDACTED]$$

- (e) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall [REDACTED]

- (f) Tax Credits. The Parties agree that the neither the Renewable Rate nor the Storage 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

(a) Buyer as Scheduling Coordinator for the Facility. Beginning on the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date of the Facility, (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 Commercial Operation Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date. On and after the Commercial Operation Date, 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.

(b) Notices. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, 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.

(d) CAISO Settlements. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within 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.

(e) Dispute Costs. Beginning on the Commercial Operation Date, 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.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Beginning on the Commercial Operation Date, 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 (including Material Permit), 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

ANNUAL EXPECTED PV ENERGY

[MWh Per Hour]

| | 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 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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-1

EXHIBIT F-2

MONTHLY EXPECTED PV ENERGY

[MWh Per Hour]

| | 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 | |
|------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--|
| 1st | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2nd | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3rd | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16th | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17th | | | | | | | | | | | | | | | | | | | | | | | | | |

Exhibit F-2

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 | |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | | |

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 = [REDACTED]

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.

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.

Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than _____

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than _____

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 conducted on [DATE] 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) Such 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 conducted on [DATE] 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 substantially 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. \$[XXXXXXXX] (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 [XXXXXXXX] 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 [XXXXXXXX] or [XXXXXXXX] 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

[Reserved]

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

| WILLOW SPRINGS SOLAR 3, LLC ("Seller") | VALLEY CLEAN ENERGY ALLIANCE ("Buyer") |
|--|---|
| All Notices: Street: 6688 N. Central Expy Ste 500 City: Dallas, TX 75206 Attn: Legal Phone: [REDACTED] Email: [REDACTED] | All Notices: Street: 604 2 nd Street City: Davis, CA 95616 Attn: Gordon Samuel Phone: [REDACTED] Email: [REDACTED] |
| Reference Numbers: [REDACTED] | Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED] |
| Invoices: Attn: Accounts Payable Phone: [REDACTED] E-mail: [REDACTED] | Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED] |
| Scheduling: Attn: 24-7 Operations Center Phone: [REDACTED] Email: [REDACTED] | Scheduling: Attn: Day Ahead Trading, Real Time Trading Phone: [REDACTED] Email: [REDACTED] [REDACTED] [REDACTED] |
| Confirmations: Attn: Settlements Phone: [REDACTED] Email: [REDACTED] | Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED] |
| Payments: Attn: Settlements Phone: [REDACTED] E-mail: [REDACTED] | Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED] |
| Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED] | Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED] |

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 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 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 Seller's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (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.
- (5) Ambient Temperature. For any CTs requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius.

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

- (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 elapsed 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. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating 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 ■■■ 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 Pmax at .95 power factor 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 ■■■ 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 Pmax at .95 power factor 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:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**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) in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) in 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 as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines), but Storage Capability shall never exceed the Effective Storage Capacity x four (4) hours.

“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.

(b) 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).

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

| | | |
|---|---|-------------------------------------|
| Technology: | Lithium ion | |
| Storage Unit Name: | [Unit Name and Number] | |
| A. Contract Capacity | | |
| Guaranteed Storage Capacity (MW): | 36 | |
| Effective Storage Capacity (MW): | 36 | |
| B. Total Unit Dispatchable Range Information | | |
| Interconnect Voltage (kV) | 230 | |
| Maximum Storage Level (MWh): | 144 | |
| Minimum Storage Level (MWh): | 0 | |
| Stored energy capability (MWh): | 144 | |
| Maximum Discharge (MW): | 36 | |
| Maximum Charge (MW): | 36 | |
| Guaranteed Efficiency Rate: | See Cover Sheet | |
| Maximum Annual Cycles: | 365 | |
| C. Charge and Discharge Rates | | |
| Mode | Maximum (MW) | Ramp Rate (MW/s) Description |
| Energy (Charge) | 36 | |
| Energy (Discharge) | 36 | |
| D. Ancillary Services | | |
| Frequency regulation is included: | Yes | |
| Spin is included: | Yes | |
| Other Operating Limits: | | |
| | 1) Maximum annual average state of charge per Contract Year: ■■■ | |
| | 2) Minimum average resting state of charge in each rolling 90-day period: ■■■ | |
| Daily Dispatch Limits: | | |
| | 1) Charging: 2 full Cycles per day | |
| | 2) Discharging: 2 full Cycles per day | |

EXHIBIT R

METERING DIAGRAM

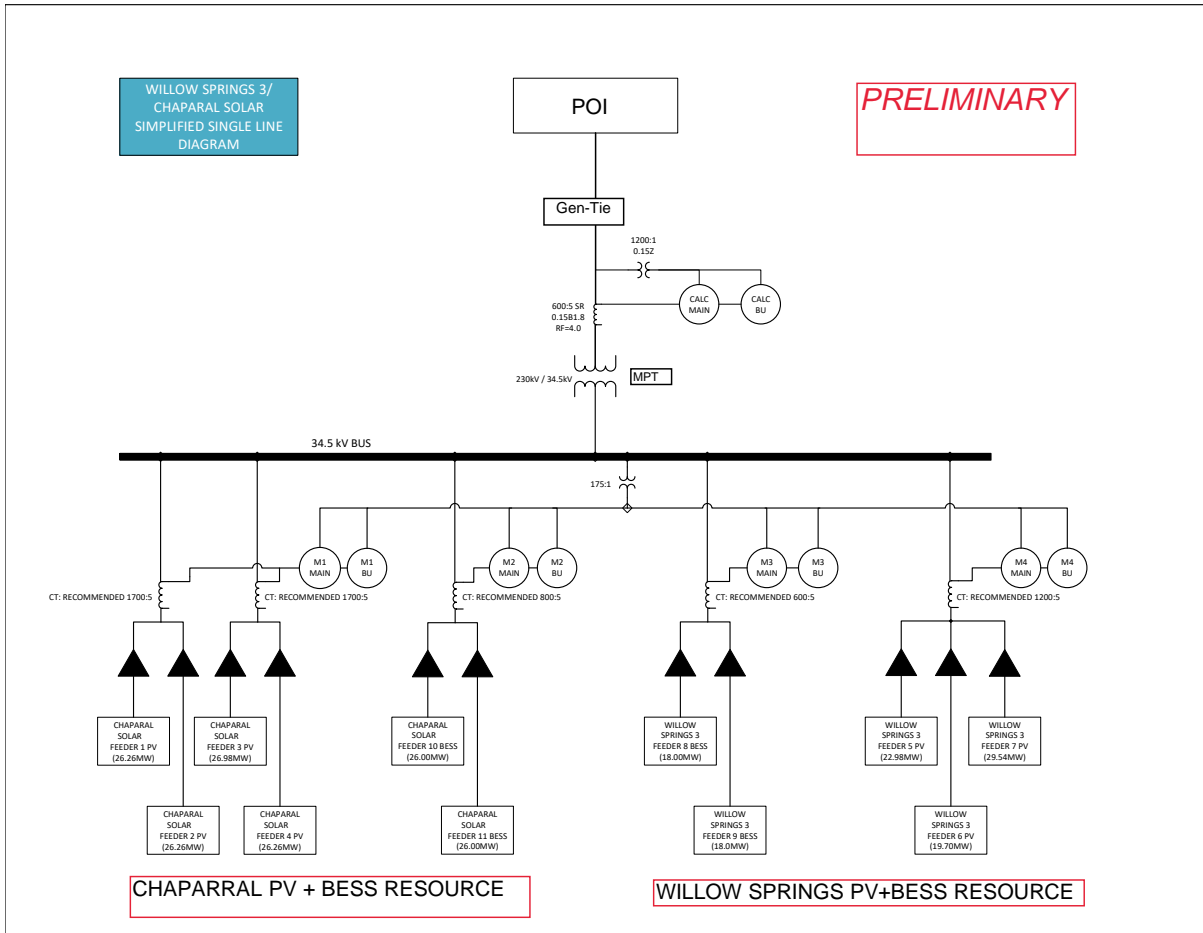


EXHIBIT S

[Reserved]

EXHIBIT T

CPM ADJUSTMENT FACTORS

| Month | Multiplier |
|-----------|------------|
| January | ██████ |
| February | ██████ |
| March | ██████ |
| April | ██████ |
| May | ██████ |
| June | ██████ |
| July | ██████ |
| August | ██████ |
| September | ██████ |
| October | ██████ |
| November | ██████ |
| December | ██████ |

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 WILLOW SPRINGS SOLAR 3, LLC
AND AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL
COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT**

WHEREAS, VCE staff engaged reputable renewable developers in a bilateral process to address near-term compliance obligations and long-term cost challenges; and

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. and

WHEREAS, Leeward Renewable Energy proposed to construct a 72-MW AC solar photovoltaic facility coupled with a 36-MW/144MWh (4-hour) lithium-ion battery energy storage system, near the city of Rosamond in Kern County, California; and

WHEREAS, a PPA has been negotiated with Leeward Renewable Energy for VCE to procure output from the Willow Springs Solar 3 project for 15 years; and,

WHEREAS, Willow Springs Solar 3, LLC is an indirect subsidiary of Leeward Renewable Energy, LLC.

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

1. The Power Purchase Agreement (PPA) between VCE and Willow Springs Solar 3, LLC for 100% of the output for 15 years of the Willow Springs Solar 3 project under development by Leeward Renewable Energy 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 Willow Springs Solar 3, LLC

Attachment A

Power Purchase Agreement with Willow Springs Solar 3, LLC

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Edward Burnham, Director of Finance and Operations
Alisa Lembke, VCE Board Clerk/Administrative Analyst

SUBJECT: Discussion on the Community Advisory Committee (Members at large)

DATE: October 14, 2021

RECOMMENDATION

1. Adopt Resolution reaffirming the Board’s September 9, 2021 action amending the structure of the Community Advisory Committee, establishing two seats for each member jurisdiction and three At-Large seats for a total of eleven seats; and establishing selection guidance criteria for the At-Large seats.
2. Update the Community Advisory Committee description and application to reflect the structure and selection guidance criteria for the At-Large seats.
3. Appoint existing CAC member Lorenzo Kristov to one of the At-Large seats.

BACKGROUND

In December 2016 the Board formed a Community Advisory Committee (CAC) to advise the Board and Staff on policy matters related to the launch and operation of VCE. The CAC began meeting in Fall 2017. In September 2018, the Board approved modifications to the terms of CAC service and criteria for new member recruitment and selection. As originally structured the CAC consists of 12 members (3 seats for each jurisdiction), with three seats currently vacant (unincorporated Yolo County, cities of Woodland and Winters).

Since formation, one or more seats have remained vacant, making it more difficult to achieve quorums and maintain appropriate workloads/time commitments for Committee members. These factors prompted a recent review of the membership structure of the CAC.

Board Action

Based on discussion and action by the Board on September 9, 2021, the Board adopted a revised CAC structure with 8 members (2 each per jurisdiction), and 3 additional seats for at large members. As part of the new adopted CAC structure, the board has requested staff to present recommended categories of expertise to be defined for at large members in this process as well as recommend and/or recruit for suitable candidates.

ANALYSIS

Staff recommends the following nonbinding recruitment/selection guidance factors be used when considering CAC applicants for At-Large seats. Staff also recommends that the Board consider diversity in subject matter expertise/experience to avoid overrepresentation of a single area of importance (e.g. financial sector).

Recruitment/Selection Guidelines

Ideal candidates for At-Large CAC seats possess subject matter expertise/experience related to the goals contained in the VCE Strategic Plan, including:

- Energy Sector (e.g. procurement)
- Community engagement
- Environmental justice
- Agricultural Sector
- Grid reliability and sustainability
- Decarbonization

Candidates that represent historically underrepresented communities in VCE’s service territory and/or are historically underrepresented in the Energy Sector professions are encouraged to apply for the CAC in general and specifically the At-Large CAC seats.

Professional Sectors that tend to intersect with VCE activities include but are not limited to those listed below. Ideal candidates for At-Large CAC seats possess professional experience in one or more of the following sectors:

- Legal (specialties in energy sector/regulatory)
- Financial (banking, accounting, auditing)
- Energy (procurement, regulatory, planning, engineering)
- Agricultural
- Community Engagement/Outreach/Customer Service (community organizing, legislative, public relations, marketing)
- Research (energy sector, decarbonization)

Recommended Selection Process for At-Large CAC Seats

Following adopted recruitment procedures, a subcommittee of Board members considers eligible candidate(s) based on professional and subject matter/experience selection guidelines above. Though no specific weight is given to a particular professional or experience factor, with appointment of At-Large CAC members the Board should seek a practical balance to allow the CAC to assess policy options and provide informed recommendations.

CONCLUSION

Staff is recommending adoption of selection guidelines for recruitment and selection of the newly created three at large member seats on the Community Advisory Committee. In addition, based on these guidelines, staff is recommending appointment of Lorenzo Kristov to one of the At-Large CAC seats and initiation of recruitment for the remaining two At-Large seats.

ATTACHMENT

1. Resolution adopting guidelines for recruitment and selection of CAC At-Large member seats

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021 - _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE AMENDING RESOLUTION 2016-006, THE COMPOSITION AND STRUCTURE OF THE COMMUNITY ADVISORY COMMITTEE, UPDATING THE DESCRIPTION AND APPLICATION, AND APPOINT MEMBER(S) TO TERMS OF SERVICE

WHEREAS, in accordance with Section 3.5.1 Commissions, Boards, and Committees of the JPA Agreement, the VCE Board of Directors on December 13, 2016 via Resolution #2016-006 formed a Community Advisory Committee (CAC);

WHEREAS, on September 13, 2018, the Board approved the terms of service and officer position of members who serve on the Community Advisory Committee;

WHEREAS, on October 18, 2018, the Board approved a three-year term for Community Advisory Committee members, how to determine the terms of service of current CAC members, and criteria for new member recruitment, solicitation and selection;

WHEREAS, on November 15, 2018, the Board adopted Resolution 2018-030 approving the solicitation, selection, and appointment process to the Community Advisory Committee and appointed members to terms of service; and,

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

1. Adopt Resolution amending the structure of the Community Advisory Committee, establishing two seats for each member jurisdiction and three At-Large seats for a total of eleven seats; and establishing selection guidance criteria for the At-Large seats.
2. Update the Community Advisory Committee description and application to reflect the structure and selection guidance criteria for the At-Large seats.
3. Appoint existing CAC member Lorenzo Kristov to one of the At-Large seats.

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

Attachments:

1. Resolution 2016-006 – Formation of CAC
2. Resolution 2018-030 – Solicitation, Selection and Appointment to CAC

RESOLUTION NO. 2016-006

RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE FORMATION OF THE VALLEY CLEAN ENERGY ALLIANCE (VCEA) ADVISORY COMMITTEE

WHEREAS, the City of Davis and Yolo County have jointly agreed to form Valley Clean Energy Alliance (VCEA), a Community Choice Energy program to serve energy customers in their respective jurisdictions; and

WHEREAS, VCEA would benefit from regular and formal input from local subject matter experts and energy customers representing a variety of its customer classes to advise on policy and operational issues.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Valley Clean Energy Alliance does hereby approve the formation of the VCEA Advisory Committee with the following purpose, composition and structure:

Purpose

1. Advise on VCEA's general policy and operational objectives, including portfolio mix and rate setting.
2. Assist VCEA staff with community outreach to and liaison with member communities.
3. Provide a forum for community discussions on energy related issues and a wide variety of strategies to reduce carbon emissions.
4. Assist VCEA Staff with monitoring legislative and regulatory activities related to CCE's.

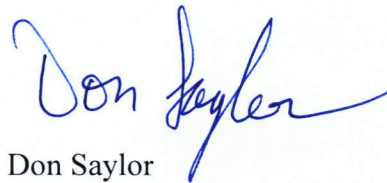
Composition and Structure

Three (3) members from each jurisdiction participating in the VCEA program. VCEA recognizes the value and seeks members representing various customer types (e.g. Agricultural, urban, rural, business, etc.), with energy and/or other relevant topic experience (e.g. HR, finance, etc.).

PASSED AND ADOPTED by the Board of Directors of the Valley Clean Energy Alliance on this 13th day of December, 2016, by the following vote:


AYES: Chamberlain, Davis, Frerichs, Saylor

NOES: None



Don Saylor
Chairperson

ATTEST:



Zoe S. Mirabile
Secretary

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2018 - 030

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE SOLICITATION, SELECTION AND APPOINTMENT TO THE COMMUNITY ADVISORY COMMITTEE AND APPOINT THE CURRENT MEMBERS TO TERMS OF SERVICE

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

WHEREAS, in accordance with Section 3.5.1 Commissions, Boards, and Committees of the JPA Agreement, the VCEA Board of Directors on December 13, 2016 via Resolution #2016-006 formed a Community Advisory Committee (CAC);

WHEREAS, on September 13, 2018, the Board approved the terms of service and officer position of members who serve on the Community Advisory Committee;

WHEREAS, on October 18, 2018, the Board approved a three-year term for Community Advisory Committee members, how to determine the terms of service of current CAC members, and criteria for new member recruitment, solicitation and selection;

WHEREAS, attached is a summary of VCEA’s solicitation and appointment process to the Community Advisory Committee; and,

NOW, THEREFORE, BE IT RESOLVED, that the VCEA Board of Directors appoint the current Community Advisory Committee Members to the terms of service listed below:

CLASS 1 – term expiring June 2019

Yolo Rep. – David Springer
Woodland Rep. – Mark Aulman
Davis Rep.– Yvonne Hunter

CLASS 2 – term expiring June 2020

Yolo Rep.– Marsha Baird
Woodland Rep. – Christine Shewmaker
Davis Rep.– Gerry Braun

CLASS 3 – term expiring June 2021

Yolo Rep.– Vacant

Woodland Rep. - Vacant

Davis Rep.– Lorenzo Kristov

ADOPTED, this 15th day of November 2018, by the following vote:

AYES: Frerichs, Stallard, Saylor, Carson, Davies

NOES: None

ABSENT: Barajas, Chamberlain

ABSTAIN: None



Lucas Frerichs, VCEA Board Chair



Alisa M. Lembke, VCEA Board Secretary

Attachment: Summary solicitation and appointment process to the Community Advisory Committee

Summary of Solicitation and Appointment Process to the Community Advisory Committee

- Officer positions (Chair, Vice Chair and Secretary) would be selected by vote of the Committee once a year.
- Each CAC Member would serve a three-year term, with the option to be reappointed for additional terms.
- For existing CAC Members, created three “graduation classes” of three CAC members – one from each member jurisdiction to keep consistency of knowledge on the Advisory Committee; therefore, Class 1 would be a two-year term, Class 2 would be a three-year term, and Class 3 would be a four-year term all expiring in June to coincide with VCE’s fiscal year end.
- Unless a CAC member requests to be included in Class 1, Staff would draw names to determine in which Class current CAC members would be placed.
- Newly solicited members would be appointed into the vacant City of Woodland and Yolo County positions in Class 3. Thereafter, as terms expire and/or are vacated, new Members would fill the open spots.
- A Community Advisory Committee description, specifying the a) purpose, b) roles and responsibilities, c) membership, d) meetings and e) term would be used for solicitation.
- An Application for Appointment to the Community Advisory Committee would be used by volunteers to request appointment.
- Existing vacancies would be noticed through VCE’s e-mail list and advertised on the VCE website using the Community Advisory Committee description and application for appointment. Additional advertisement via word of mouth would be encouraged.
- Applications received would be reviewed by Staff then forwarded to the Board subcommittee for review and recommendation to the full Board. The VCE Board would appoint volunteers to terms of service on the CAC.
- Applications would be kept on file for a minimum of two (2) years.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Edward Burnham, Director of Finance and Operations

SUBJECT: Discussion on the possible change in the accounting year

DATE: October 14, 2021

RECOMMENDATION

Provide feedback and direction on the possible change in accounting year from the current Fiscal Year ending on June 30 to a Calendar Year ending on December 31.

BACKGROUND

Since its formation, Valley Clean Energy has operated with a fiscal accounting year ending on June 30, aligned with the Member Jurisdictions' Fiscal Year. Over the past two years, VCE has experienced high volatility in the energy sector and overall economy, primarily driven by the uncertainty during the COVID-19 pandemic and possible long-term recession. VCE has experienced other financial impacts compared to the adopted budgets driven by forces outside VCE's direct control, including the forward market pricing for energy costs, PG&E generation rate adjustments, and power charge indifference adjustments (PCIA). VCE should consider the optimal timeline of financial milestones to reduce the risks of operating budget performance.

ANALYSIS

As described above, VCE has maintained a Fiscal Year ending June 30. Staff outlines below a comparison timeline of the current Fiscal Year ending June 30 and a Calendar Year ending on December 31. The Accounting Year options below are based on a timeline based on significant financial milestones that are incorporated into the budget and audit processes and impact both costs and revenues.

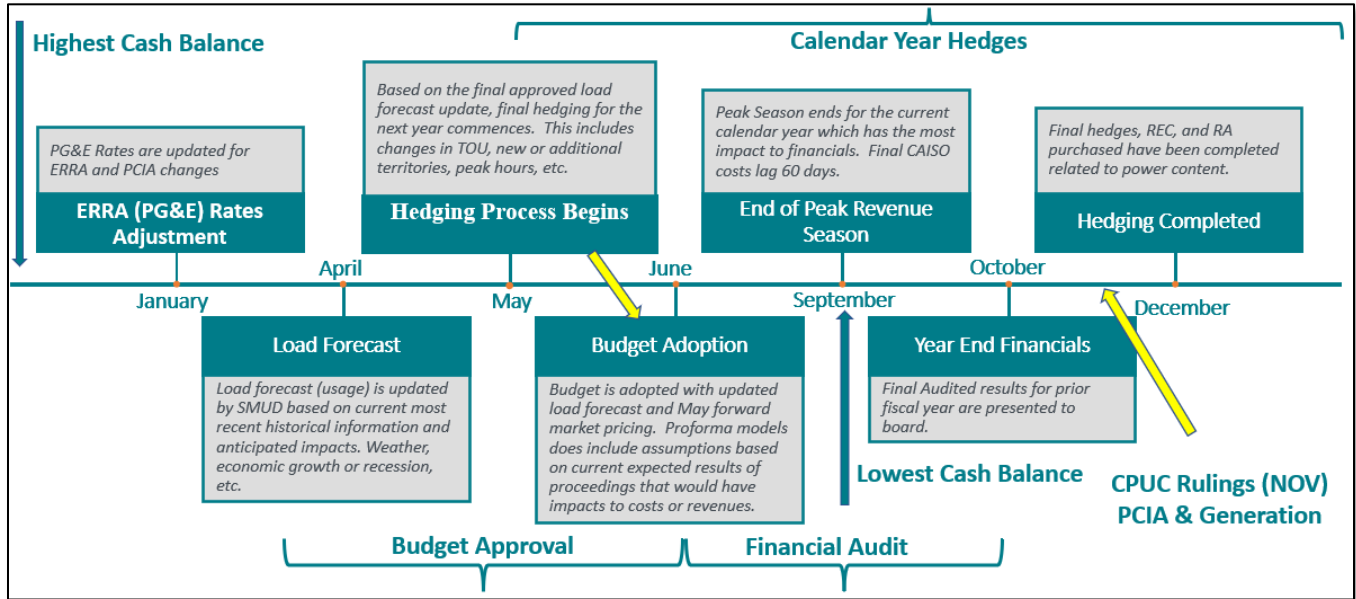
As part of this analysis, VCE did find that the accounting years were not standardized throughout California (including CCA's) and had no regulatory requirements.

Option 1 – Fiscal Year Ending June 30: Option 1 continues with the current accounting year based on the Fiscal Year ending June 30. The Fiscal Year option includes no changes, modifications, and additional audits. The VCE Fiscal Year is aligned with VCE Member Fiscal Year.

Historically, the Fiscal Year timeline has experienced risks associated with the closeness of VCE's load update, completion of hedging for the adopted budget, and separates the peak energy season

(summer) into two Fiscal Years. A Fiscal Year budget incorporates additional assumptions for future regulatory decisions impacting our most significant inputs for generation rate and PCIA rate adjustments increasing the risk of operating budget performance.

FISCAL YEAR TIMELINE OF FINANCIAL MILESTONES



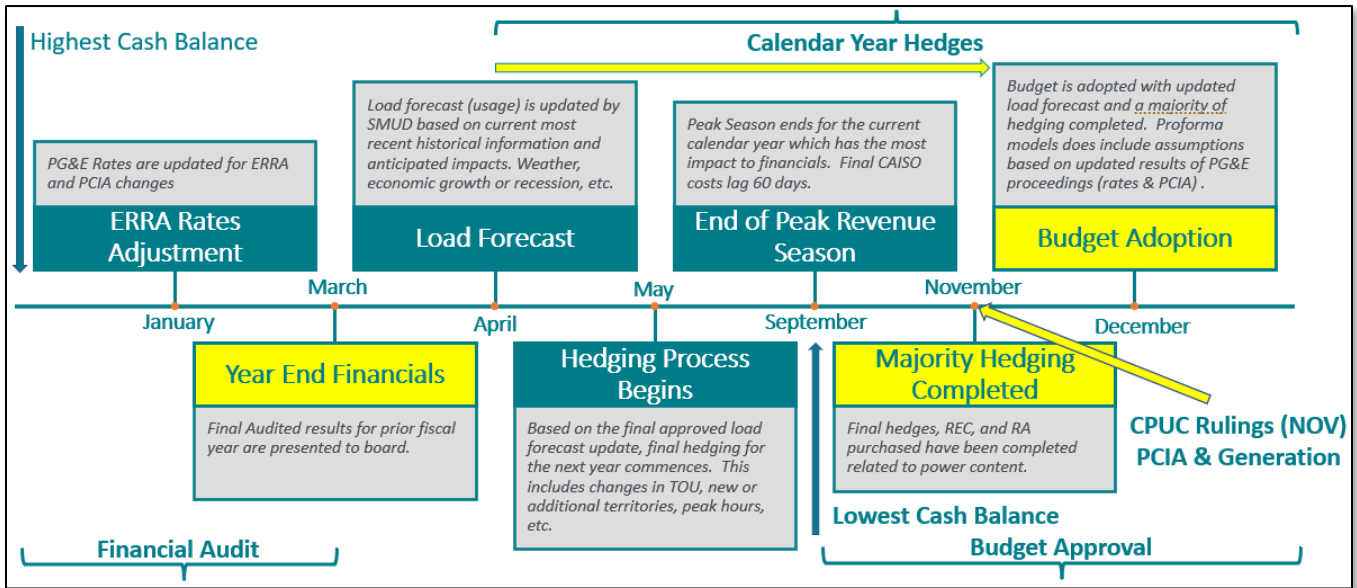
Option 2 – Calendar Year ending December 31 (preferred): Option 2 would transition VCE to a Calendar Year ending on December 31. VCE adoption of a Calendar Year could be beneficial by allowing additional time for internal decisions and reviewing the external decisions that impact our operating budget performance, as displayed in the updated timeline below.

Internal and external advantages are as follows:

- Power Contracts are based on CY (Internal)
- Regulatory Compliance Reporting is based on CY (External)
- Peak Revenue Season (May-September) would not be split (External)
- Increased fixed Power Costs by hedging completion (Both)
- Accuracy of Customer Rates (PG&E filings and VCE costs – External)
- Additional Review Time for Load Update - (Internal)
- Reduced Risks of uncontrollable or variable financial impacts (Internal)

The long-term impact of a Calendar Year will also support stabilizing the rate-setting process (Companion Board Item). The implementation process would require VCE to amending the current Fiscal Year 2022 budget to end as of December 31, 2021, the board adoption of a Calendar Year budget ending December 31, 2022, and an audit to be completed the first quarter of 2022. VCE could delay the transition for one year.

CALENDAR YEAR TIMELINE OF FINANCIAL MILESTONES



*Note: Highlighted headings in the time-line indicate shifts in key budget milestones compared to the existing fiscal year calendar (i.e. July to June)

CONCLUSION

As described above, the transition of our accounting year to a Calendar Year ending December 31 compared to the Fiscal Year ending June 30 reduces the risks of operational budget performance. Staff is seeking direction from the Board on potential implementation and timing for a possible change in accounting year from the current Fiscal Year ending on June 30 to a Calendar Year ending on December 31. If the Board provides direction to make the change, staff believes it is feasible to bring back a calendar year based budget structure and draft 2022 budget for Board consideration in December.