2075 Woodside Road | Redwood City, CA 94061
(650) 260-0005 | peninsulacleanenergy.com

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA)
AGENDA
Thursday, June 22, 2023
6:30 p.m.

PLEASE NOTE: This meeting will be held in a hybrid format with both in-person and Zoom participation options for members of the public; Board members shall appear in person.

In-Person Meeting Locations:
PCEA Lobby, **2075 Woodside Road, Redwood City, CA 94061**
Los Banos City Hall, **Conference Room A, 520 J Street, Los Banos, CA 93635**

Zoom, **Virtual Meeting Link:** https://pencleanenergy.zoom.us/j/82772843517
Meeting ID: 827-7284-3517 **Passcode:** 2075 **Phone:** +1(669) 444-9171

This meeting of the Board of Directors will be held at the Peninsula Clean Energy Lobby: 2075 Woodside Road, Redwood City, CA 94061 and Los Banos City Hall, Conference Room A, 520 J Street, Los Banos, CA 93635 and by teleconference pursuant to California Assembly Bill 2449 and the Ralph M. Brown Act, CA Gov't Code. Section 54950, et seq. **Members of the Board are expected to attend the meeting in person** and should reach out to Assistant General Counsel for Peninsula Clean Energy, Jennifer Stalzer, with questions or accommodation information (jstalzer@smcgov.org). For information regarding how to participate in the meeting remotely, please refer to the instructions at the end of the agenda. In addition, a video broadcast of the meeting can be viewed at https://www.peninsulacleanenergy.com/board-of-directors following the meeting.

Public Participation

The PCEA Board meeting may be accessed through Zoom online at https://pencleanenergy.zoom.us/j/82772843517. The meeting ID is: 827-7284-3517 and the passcode is 2075. The meeting may also be accessed via telephone by dialing +1(669) 444-9171. Enter the webinar ID: 827-7284-3517, then press #. (Find your local number: https://pencleanenergy.zoom.us/u/kTlH1Ocod). Peninsula Clean Energy uses best efforts to ensure audio and visual clarity and connectivity. However, it cannot guarantee the connection quality.

Members of the public can also attend this meeting physically at the **Peninsula Clean Energy Lobby** at 2075 Woodside Road, Redwood City, CA 94061 or **Los Banos City Hall**, Conference Room A, 520 J Street, Los Banos, CA 93635.

Written public comments may be emailed to PCEA Board Clerk, Nelly Wogberg (nwogberg@peninsulacleanenergy.com) and such written comments should indicate the specific agenda item on which the member of the public is commenting.

Spoken public comments will be accepted during the meeting in the Board Room(s) or remotely through Zoom at the option of the speaker. Please use the "Raise Your Hand" function in the Zoom platform, or press *6 if you phoned into the meeting, to indicate that you would like to provide comment.

ADA Requests

Individuals who require 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, should contact Nelly Wogberg, Board Clerk, by 10:00 a.m. on the day before the meeting at (nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make reasonable arrangements to ensure accessibility to this meeting, the materials related to it, and your ability to comment.

Closed Captioning is available for all PCEA Board meetings. While watching the video broadcast in Zoom, please enable captioning.

CALL TO ORDER / ROLL CALL/ APPROVE TELECONFERENCE PARTICIPATION UNDER AB 2449

This item is reserved to approve teleconference participation request for this meeting by Director pursuant to Brown Act revisions of AB 2449 due to an emergency circumstance to be briefly described.

PUBLIC COMMENT

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

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Approval of the Minutes for the May 25, 2023 Board of Directors Meeting
2. Appointment of Members to the Citizens Advisory Committee (CAC)

REGULAR AGENDA

3. Chair Report (Discussion)
4. CEO Report (Discussion)
5. Citizens Advisory Committee Report (Discussion)
6. Recognition of Chief Executive Officer Jan Pepper Upon Retirement (Discussion)
7. Approval of the Fiscal Year (FY) 2023-2024 Budget (Action)

8. Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement (PPA) With Sunzia Wind Powerco LLC, and any Necessary Ancillary Documents, Including A Potential Replacement PPA With no Material Changes From Those Presented to the Board, With a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or About September 30, 2026, in an Amount Not-to-Exceed $858 Million (Action)

9. Approval of Staff's Recommendation on Delivery of 100% Renewable Energy Annually by 2025 and on a 99% Time-Coincident Basis by 2027 (Action)

10. Approval of Resolution Approving Appointment of Shawn E. Marshall as Chief Executive Officer (CEO) and an Agreement for her Service as CEO for the Term of July 1, 2023 to June 30, 2026 in an Amount Not-to-Exceed $400,000 Annually (Action)

11. Regionalization Study Session (Discussion)

12. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

13. Update on Marketing, Outreach Activities, and Account Services

14. Update on Regulatory Policy Activities

15. Update on Legislative Activities

16. Update on Community Energy Programs

17. Update on Energy Supply Procurement

18. Report on California Community Power (CCP) Joint Powers Authority

19. Industry Acronyms and Terms

ADJOURNMENT

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

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

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

Options for Joining

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

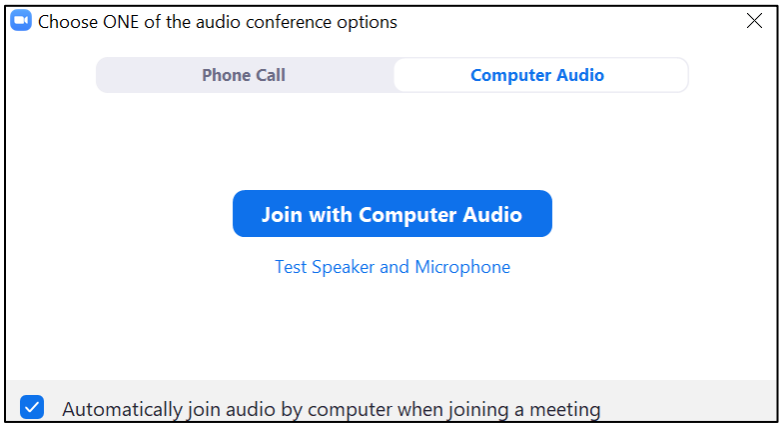
Videoconference Options:

Prior to the meeting, we recommend that you install the Zoom Meetings application on your computer by clicking here https://zoom.us/download.

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the Zoom application.

Option 1 Videoconference with Computer Audio:

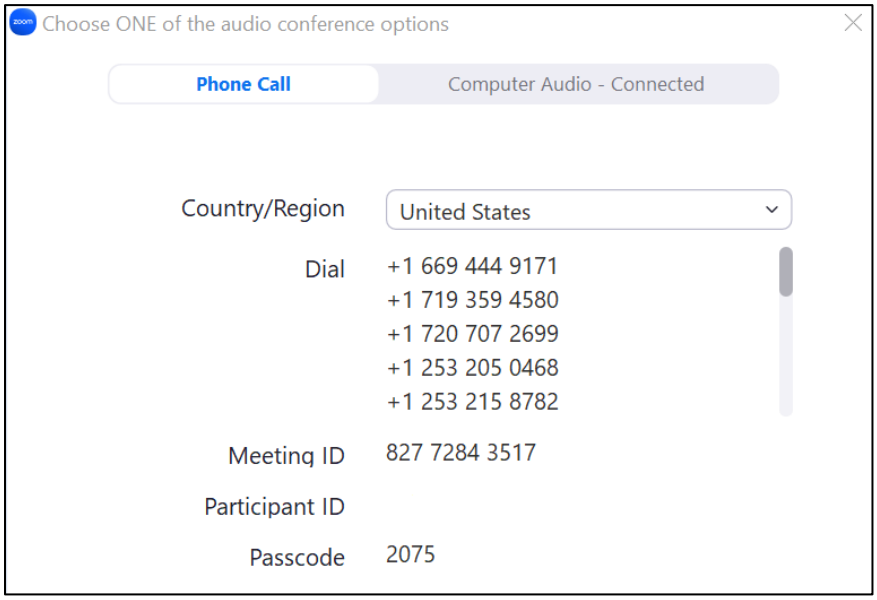
1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82772843517
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.



4. Click the blue, “Join with Computer Audio” button.
5. In order to enable video, click on “Start Video” in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Option 2 Videoconference with Phone Call Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82772843517
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.



3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.
4. Please dial +1(669) 444-9171
5. You will be instructed to enter the meeting ID: **827-7284-3517 followed by #**
6. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account
7. After a few seconds, your phone audio should be connected to the Zoom application on your computer
8. In order to enable video, click on “Start Video” in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio

Audio Only Options:

Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.

Option 3: Calling in via Telephone/Landline:

1. Dial +1(669) 444-9171
2. You will be instructed to enter the meeting ID: **827-7284-3517 followed by #**
3. You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line
4. You will be instructed to enter the meeting passcode **2075 followed by #**

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

Thursday, May 25, 2023
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:32 p.m. in virtual teleconference, in the Peninsula Clean Energy Authority lobby, in the Los Banos City Hall conference room A, and the Homewood Suites Anaheim Resort in California.

ROLL CALL

Participating:

Dave Pine, San Mateo County
Rick DeGolia, Atherton, *Chair*
Julia Mates, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Ken Gonzalez, Colma
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto
Sam Hindi, Foster City
Harvey Rarback, Half Moon Bay
Leslie Ragsdale, Hillsborough
Paul Llanez Faria, Los Banos
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Tygarjas Bigstyck, Pacifica
Jeff Aalfs, Portola Valley
Elmer Martinez Saballos, Redwood City
Marty Medina, San Bruno
Pranita Venkatesh, San Carlos
Adam Loraine, San Mateo
Kevin Bryant, Woodside

Absent:

Ray Mueller, San Mateo County
James Coleman, South San Francisco

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

MOTION: Director Medina moved, seconded by Director Hindi to set the Agenda, and approve Agenda Item Numbers 1-2.

1. Approval of the Minutes for the March 23, 2023 and April 27, 2023 Board of Directors Meetings

2. Approval of revisions to the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) Tariff Sheet

MOTION PASSED: 21-0 (Absent: San Mateo County, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Lee	X			
South San Francisco	Director Coleman				X
Woodside	Director Bryant	X			
	Totals	21			2

REGULAR AGENDA

3. Chair Report

Chair DeGolia gave a recap of the CalCCA Conference in San Diego, California. Chair DeGolia noted that Garth Salisbury, the Chief Financial Officer at Marin Clean Energy will present to the June 12, 2023 Audit and Finance Committee meeting.

4. CEO Report

Jan Pepper, Chief Executive Officer, gave a presentation including a note that Peninsula Clean Energy Staff is working on improving audio quality for the recorded meetings, a staffing update including summer interns, a legislative update, information on Community Impact Awards from the CalCCA Conference, and a recap of staff volunteer events in the community. Jan reported that Peninsula Clean Energy received two Community Impact Awards: we received first place in the Equity Category for our Community Outreach Grants Program and we received runner-up in the Decarbonization Category with EBCE and SVCE for the reach codes work.

5. Citizens Advisory Committee Report

Cheryl Schaff, Citizens Advisory Committee (CAC) Chair, gave a presentation recapping the May 11, 2023 Citizens Advisory Committee Meeting, including enthusiasm for a committee name change to the Community Advisory Group.

Director Romero asked the process for the CAC changing their name. Chair DeGolia explained the name change will be brought to the Board for official adoption.

Director Aalfs asked when new CAC members would be approved. Cheryl explained that new members would be approved at the June Board meeting and sworn in at the July 13, 2023 CAC meeting.

Director Nash offered her gratitude for the interest in the local government electrification program.

6. Approval of DEAI Action Plan (Action)

Kirsten Anders-Schwind, Senior Manager of Community Relations, introduced the Diversity, Equity, Accessibility, and Inclusion (DEAI) Action Plan.

Vice Chair Colson shared background information on Peninsula Clean Energy's DEAI Commitment.

Shayna Barnes, Operations Specialist, continued the presentation with the Action Plan development and the DEAI Action Plan outline.

Kirsten continued the presentation with the foundation of strategic goals, organizational culture and DEAI commitment actions, actions for human resources, staffing and recruitment,

Chair DeGolia asked for clarification on Self-ID. Kirsten explained, that self-ID is asking individuals to identify in a safe way and allowing for ongoing change.

Kristen continued the presentation with Energy Program development and implementation, and Marketing and Account Services actions.

Director Mackin asked to see a simplification of messaging to older residents included in the action plan.

Vice Chair Colson noted that she is working on Age Friendly Cities documents in Burlingame to work with organizations like Peninsula Clean Energy, One Shoreline, City/County Association of Governments, and others to figure out ways to engage our seniors back in the political process and encouraged participation at the city level.

Shayna continued the presentation with vendor and energy supplier diversity actions, monitoring and evaluation, an overview of appendices, and training plan recommendations.

Director Mates noted her thanks for the Citizens Advisory Committee (CAC) and the DEAI Subcommittee and Staff for their important work on DEAI and asked if staff is on board with the aggressive timeline? Kirsten explained that it is important to start aggressively and do our best. Director Mates also noted the importance of making sure that trainings speak to all the different kinds of diversity definitions that exist.

Chair DeGolia noted that he hopes this item could come before CalCCA next year and that to make that work we have to know how to define this so it can be easily explained to others.

Director Daus-Magbual thanked Vice Chair Colson and the DEAI Subcommittee, including Staff and GCAP for their work on the DEAI Action Plan.

Director Bigstyck noted the strong stance Peninsula Clean Energy is taking on this version of equity, and shared that Jonathan Cordero, the Executive Director of the Association of Ramaytush Ohlone, offers some trainings that he will connect with Staff about. Director Bigstyck also noted that environmental justice hasn't been mentioned tonight and is a connection to Peninsula Clean Energy's environmental mission.

Director Hindi shared gratitude to others on the DEAI Subcommittee and thanked the Board for direction to do the maximum amount of effort.

Director Romero asked if the DEAI Council has been formed and if not, when is that Council expected for form. Kirsten explained that is an internal Staff council was formed in Fall 2022 and has been expanded to include representatives from all departments. The staff-led DEAI Council meets twice a month to assist departments in implementing the Action Plan.

Director Romero asked how the annual review process will work. Kirsten explained that is yet to be determined. Director Romero suggested an outside vendor work with the DEAI Council to review the status of meeting DEAI goals.

Vice Chair Colson suggested the original consultant, GCAP, or other consultants who were interviewed previously could be brought in again to help with annual monitoring.

Director Romero expressed his gratitude to those who have worked hard to keep the DEAI Action Plan moving forward.

Director Mackin shared that internal annual reporting is equally important to external reporting and suggested a debriefing from contractors that Peninsula Clean Energy contracts with to see the ease of complying with what is asked of them.

MOTION: Director Romero moved, seconded by Director Daus-Magbual to Adopt Peninsula Clean Energy Diversity, Equity, Accessibility, and Inclusion (DEAI) Action Plan

MOTION PASSED: 21-0 (Absent: San Mateo County, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller				X

Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Bryant	X			
	Totals	21			2

7. Review of Fiscal Year 2023-2024 Draft Budget (Discussion)

Andy Stern, Interim Chief Financial Officer, gave a presentation including a budget review and approval schedule, key assumptions of the draft budget for Fiscal Year (FY) 2023-2024, revenue assumptions for PG&E generation rate and Power Charge Indifference Adjustment (PCIA) assumptions, and revenue assumptions with PG&E PCIA and generation rate assumptions.

Director Loraine asked when Peninsula Clean Energy would be free of the PG&E PCIA obligation.

Jan Pepper, Chief Executive Officer, added that the PCIA would remain until 2040 or 2045.

Chair DeGolia noted that the only thing we've seen in the last few years is that projections are impossible to predict. Jan added that the day when projections are done, they are as good as can be, and that outside forces change things.

Director Romero asked for clarification on the two conservatism contingencies from key assumptions. Andy explained that cost of energy is budgeted at $311 million, with the $39 million increase inclusive of almost $16 million in contingencies. Andy noted that without the contingencies the forecast would still be 9% higher.

Vice Chair Colson noted that the carryover of 180 days cash on hand is to absorb unexpected volatility and added that our conservative financial policies are why Peninsula Clean Energy has cash on hand.

Jan Pepper added that the 24/7 goal is less expensive than being subject to the volatility of natural gas prices and fossil fuels. Jan added that once you contract for renewables there isn't any fuel volatility and that even if the 24/7 timeline goals weren't met it would be more expensive to purchase renewable energy credits rather than having locked in prices for contracts.

Andy Stern continued the presentation with cost of energy assumptions, staffing assumptions, other budgeting assumptions including the Solar and Storage on Public Buildings program, and the summary initial draft budget for FY 2024.

Director Romero asked if the predictions for market price of Resource Adequacy (RA) could vary greatly. Jan Pepper explained that yes, they could, and that prices are currently very high.

Andy Stern noted that a signification amount has been factored in for volatility and contingency, and that a significant chunk of the $5 million happened in a 10-day period in September 2022 during the heat wave.

Andy Stern continued the presentation with the Draft Budget FY 2023-2028 Budget summary and 5-year Plan.

Jan Pepper shared staff's recommended steps to discuss excess funds including a recommendation that the Executive Committee form a subcommittee to determine a policy on use of excess funds, considering Peninsula Clean Energy's mission and other objectives and noting that this is a policy decision and the Executive Committee's role is to work through policy changes.

Andy Stern added that energy prices are volatile, the PCIA is extremely difficult to predict, and that long-term projections are based on continued rate-setting using PG&E's rates and expected PCIA which are not reliable 5-years out. Andy added that Staff is simultaneously investigating a cost-of-service rate setting format which would tie rates to cost. Andy also shared that 180 days cash on hand is a company policy, but in his opinion it is lower than recommended.

Vice Chair Colson asked if moving to a cost-of-service model would reduce the overages that tend to occur in the current model. Andy explained that if load and costs could be accurately predicted, it would narrow it. Andy shared that the Investor Owned Utilities (IOUs) set their rates on a cost-of-service model within the California Public Utilities Commission (CPUC) margin they are allowed to charge, but that they frequently miss the mark in part because it is difficult to predict what will happen in energy markets.

Director Aalfs shared that rate setting could reward consumers for saving during critical times and could become strategic as a conservation tool. Director Aalfs asked if there is a negative correlation between RA and PCIA. Andy explained that one of the contributors to why RA prices change is that more Community Choice Aggregations (CCAs) are chasing the same resources to be compliant. CCAs are only getting bigger and more prevalent and that could be a counterweight to the prediction.

Public Comment: Micah

Chair DeGolia noted that projections are highly volatile and that the numbers in the budget are large in contrast to the budgeted loss 2 years prior and supported Staff's decision to create a mechanism to address the policy issue.

Director Llanez shared information on the financial demographics in Los Banos and noted that Los Banos and San Mateo County are not on level playing fields. He also noted that the policy on days

cash on hand should be adjusted before creating the budget. Andy Stern explained that the policy is a minimum days cash on hand policy with the intention of the policy that if the amount went below 180, there would need to be a marked change of either increased rates or cuts in programs. The policy does not address a maximum, which is a Board decision.

Director Nash shared that within the budget in Menlo Park there are strong climate goals and one of the pieces that isn't coming together is the Electric Vehicle (EV) charging infrastructure, especially for emergency vehicles. Director Nash asked for $300,000-$500,000 for two fast EV chargers for emergency vehicles in Menlo Park.

Vice Chair Colson noted that many cities are trying to electrify fleets and that this falls under policy work and is a broader topic for partially using reserves as a pool for electrification standards for municipal buildings. Knowing that EV infrastructure is a need, the Board could set up a fund and allocate money, rather than a one-off for an individual city.

Director Aalfs noted Peninsula Clean Energy has an EV charging structure program. Director Nash shared that Menlo Park is in the Peninsula Clean Energy program for EV infrastructure which covers approximately 6-10% of the costs, and that because these are lighter duty vehicles the cost is is not covered by PG&Es rebates.

Vice Chair Colson suggested a program to consider could be a revolving loan program with a low interest rate, giving flexibility to pay it back over different budget cycles.

Shawn Marshall, Chief Operating Officer, added that some of this is being contemplated with the local government electrification program which is under development.

Chair DeGolia noted that this is a policy issue, and the Board needs to figure out the right mechanism with what to do, not as part of a one-off, but with specific uses of the funds to achieve the goals that are targeted. Peninsula Clean Energy had the highest discount rate of any CCA in California; Pioneer Clean Energy now has a 15% discount rate. It is impossible to predict what will happen with rates, but Peninsula Clean Energy's mission is not just to provide clean energy but to also do it at a lower cost. Chair DeGolia added that he is interested in increasing the discount so all customers can feel that.

Director Daus-Magbual suggested a framework such as an equity net that can show specific needs in each city.

Director Mates noted that Staff recommends the Executive Committee forms a subcommittee and asked if the subcommittee could be formed differently.

Jan Pepper explained that the suggestion would be to not have a quorum of any committee.

Directors Fung noted that this should be viewed holistically and through an equity lens while prioritizing Peninsula Clean Energy's goals and taking Andy Sterns consideration on the number of days cash on hand into account.

Jennifer Stalzer, Associate County Counsel, noted that an ad-hoc subcommittee could meet as a derivative of the board to determine what to do with these funds.

Director Nash shared that climate action is important and is affecting our most vulnerable communities first.

Chair DeGolia restated that Staff suggested forming an ad-hoc subcommittee at the June 12, 2023 Executive Committee and to let the Chair know of interest in serving on the ad-hoc committee. Chair DeGolia suggested the subcommittee return with a recommendation on how to address the surplus, not necessarily the answer, but to bring this back to the entire Board.

Director Medina noted submitting ideas to Staff versus the ad-hoc subcommittee.

Director Ragsdale added that ideas could be brought to the Citizens Advisory Committee (CAC).

Chair DeGolia agreed that this is an important issue for the CAC.

Jan Pepper asked for clarification. Chair DeGolia suggested that the Executive Committee discuss and decide what type of ad-hoc committee to set up, and for those who are not on the Executive Committee to let the Chair know. The Executive Committee will return to the Board at the next meeting to set policy rather than approve individual projects.

8. Approval of New Peninsula Clean Energy Rates to be Effective July 1, 2023 with a Net 5% Discount in Generation Charges for ECOplus Compared to PG&E Generation Rates (Action)

Justin Pine, Strategic Accounts Manager, gave a presentation including the PG&E June 1, 2023 rate change, an explanation of the E-TOU-C rate, information in the E-TOU-C rate change, and the Peninsula Clean Energy rate change and bill impact.

Director Loraine clarified that there are two parts to the recommendation, one in response to PG&Es rates but the other part is an ongoing program that Peninsula Clean Energy has already begun. Justin explained that the statewide transition in 2021 changed the default rate from all Investor Owned Utilities (IOUs) and Community Choice Aggregation (CCAs) to the E-TOU-C rate. The rate schedule that customers can choose and is the dafult when they start service with PG&E and Peninsula Clean Energy.

Director Romero asked what the chances are of the Canary Media article on assumption of rates.

Chair DeGolia noted that this isn't on the agenda but there are a lot of issues around this, and that there will be assessment of the impacts as this would be changing rates from a usage basis to household income.

MOTION: Director Hindi moved, seconded by Director Ragsdale to Approve a Resolution authorizing staff to calculate and implement new Peninsula Clean Energy ECOplus rates to be effective July 1, 2023 to reflect changes to PG&E rates happening June 1, 2023 ensuring a minimum net 5% discount.

MOTION PASSED: 20-1 (Absent: San Mateo County, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			

Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez		X		
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Bryant	X			
	Total	20	1		2

9. Board Members' Reports

Director Bigstyck shared that the Pacifica Pride Parade will be held on June 3, 2023.

CLOSED SESSION

The Board went into closed session at 8:55 p.m. and returned from closed session at 9:51 p.m. with no reportable action.

ADJOURNMENT

Meeting was adjourned at 9:51 p.m.

PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence

DATE: June 1, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

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

FROM: Board Committee on Citizens Advisory Committee Recruitment

SUBJECT: Appointment of Members to Citizens Advisory Committee (CAC)

RECOMMENDATION:
Adopt a Resolution Appointing Members to the Peninsula Clean Energy Authority Citizens Advisory Committee.

BACKGROUND:
On February 23, 2017, the Peninsula Clean Energy Board of Directors approved a proposal and a resolution approving the formation of a Citizens Advisory Committee (CAC) and indicating that it should consist of 11 to 15 members. On May 24, 2017, the Board of Directors appointed 15 members to the Citizens Advisory Committee (CAC).

As outlined by the Board of Directors, the general term for CAC members is three years. However, initial CAC members were appointed to staggered terms of either one year, two years, or three years. CAC members are eligible for re-appointment for up to three total terms.

Three CAC members have terms ending in 2023: Michael Closson, Katie Green, and Desiree Thayer. Two members requested to be re-appointed to another three-year term: Michael Closson and Desiree Thayer. Katie Green did not seek reappointment to the Committee.

In addition, four CAC members, Joe Fullerton, Michael Garvey, Ed Love, and Bryan Tran, stepped down from the Committee before their term ended, creating four additional openings.

Peninsula Clean Energy staff publicly solicited applications to gather a pool of potential appointees. Twenty-two applications were received, and all candidates were invited to interview with a subcommittee of the Board of Directors consisting of Donna Colson, Dave Pine, and Pranita Venkatesh. CAC members seeking re-appointment were evaluated amongst the new pool of applicants, with overall contributions and history of CAC meeting attendance considered.

Discussion:

The Board Subcommittee on Citizens Advisory Committee Recruitment recommends that the Peninsula Clean Energy Board of Directors reappoint the two CAC members whose three-year terms expires in 2023 and who requested reappointment. These members are Michael Closson of Menlo Park and Desiree Thayer of Burlingame.

The Board Committee on Citizens Advisory Committee Recruitment also recommends the Board appoint the following applicants as new appointees.

- Mele Heimuli of East Palo Alto
- Aurelio Huizar of Burlingame
- Gail Lee of San Bruno
- Shreyas Sudhakar of Menlo Park
- Robert Whitehair of San Mateo

More information on their qualifications is included in Attachment 1 to the Resolution accompanying this memo.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

*** * * * * ***

RESOLUTION APPOINTING MEMBERS TO THE PENINSULA CLEAN ENERGY AUTHORITY CITIZENS ADVISORY COMMITTEE (CAC)

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, Section 3.5 of the PCE Joint Powers Agreement states that the "Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board"; and

WHEREAS, PCE believes that establishment of an advisory committee, made up of members drawn from the community, would assist PCE in carrying out its mission; and

WHEREAS, the Board approved the creation of a Citizens Advisory Committee ("Committee" or "CAC") on February 23, 2017, to be appointed by the PCE Board through an application process including review and recommendation by a committee of the PCE Board; and

WHEREAS, the Board appointed fifteen members to the Citizens Advisory Committee on May 24, 2017, and

WHEREAS, there are three members whose terms are expiring in 2023 and who are eligible for reappointment, and

WHEREAS, two members of the CAC sought reappointment,

WHEREAS, there are four additional members of the CAC who are stepping down from their seats and for which new appointments are needed, and

WHEREAS, the Board publicly solicited applications for the Citizens Advisory Committee, these applications were reviewed by a Subcommittee of Board Members in April 2023, and that Subcommittee has recommended specific applicants for appointment.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board appoints the individuals listed in Attachment 1 hereto as members of the Citizens Advisory Committee for the term 2023-2026.

* * * * * *

Attachment 1

June 2023 Recommendations for Appointment[1] to the Peninsula Clean Energy Citizens Advisory Committee

Term	Name	City	Selected Background
Renewed Term	Michael Closson	Menlo Park	Former CAC Chair and Executive Director of Acterra. Advocated for Community Choice Aggregation in San Mateo County and served on the original Peninsula Clean Energy formation committee.
Renewed Term	Desiree Thayer	Burlingame	Former CAC Chair. Active in engaging youth across San Mateo County with the Burlingame Citizens Environmental Council. Extensive outreach and legislative volunteer experience through Oxfam.
New Term	Mele Heimuli	East Palo Alto	Community affordable housing advocate and former office manager for a local family construction business. Eager to contribute to neighborhood and community as a member of the CAC.
New Term	Aurelio Huizar	Burlingame	Program Coordinator for El Concilio conducting outreach across San Mateo County and helping income-qualified residents enroll in energy utility bill discounts such as CARE, usually in Spanish.
New Term	Gail Lee	San Bruno	Sustainability Director for UCSF and former Director of Environmental Health and Safety for Mills Hospital. Brings deep experience of energy use in health care settings.
New Term	Shreyas Sudhakar	Menlo Park	Entrepreneur leading a startup focused on residential electrification through heat pump technology. Interested in shaping electrification initiatives to accelerate the transition to clean electricity.
New Term	Robert Whitehair	San Mateo	Co-leader of the San Mateo Climate Action Team. Active community champion and spokesperson for building electrification. Recipient of the Peninsula Clean Energy All-Electric Leader Award for Outstanding Residential Modernization.

[1] The length of the appointment is three years, from June 2023 until June 2026.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 13, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

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

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: CEO Report

REPORT

With Thanks and Gratitude

It has been such a privilege to serve as your Chief Executive Officer for the first seven years of Peninsula Clean Energy's existence. The opportunity to start-up a new public agency, with a mission to reduce greenhouse gas emissions through cleaner and greener electricity has been my dream position! Thank you to all of you on the Board for your willingness and support for Peninsula Clean Energy to lead the energy industry in implementing one of the most aggressive renewable energy goals in the world, namely delivering 100% renewable energy on a 24/7 basis by 2025 (or 2027). And at the same time, we are delivering this superior energy product at a cost savings to our customers. From day one, we have accelerated the State's clean energy goals, and we continue to do that as we use this clean electricity to decarbonize transportation and buildings. Demonstrating that clean electricity is less expensive for customers is critical for encouraging adoption across the state, country, and the world, ultimately leading to a more sustainable and affordable energy future for all.

All of this is possible because of the amazing staff here at Peninsula Clean Energy. It has been a real joy to work with such a talented and dedicated group of people. From our small team working at the long white desk in the Office of Sustainability back in 2016, to the 40 team members we now have, it has been incredibly satisfying and fulfilling to have built this organization to this point.

As I transition to a different role and empower the next generation to carry on this important work, I look forward to continuing to spread the word about what we have achieved and will continue to achieve here at Peninsula Clean Energy.

Staffing Updates

We are currently recruiting for the following open positions. The job descriptions can be found on the website. If you know of any great candidates, please send them our way.

Power Resources Analyst / Specialist

Account Services Specialist

Senior Analyst, Account Services

Senior Manager, Local Power Development

Chief Financial Officer

CalCCA Conference Awards

At this year's CalCCA Annual Conference in San Diego, Peninsula Clean Energy was the recipient of two Community Impact Awards. It was an incredible honor to be recognized by our peers for the innovative ways we make an impact on our community.:

- In the Equity category, Peninsula Clean Energy was awarded first-place for our Outreach Grants program. Recognition for the tremendous work in this area goes to Kirsten Andrews-Schwind.
    - PCE Staff was asked to put together a short video detailing our Outreach Grants program for the event. A link to that event can be found here: https://youtu.be/8WcMs92f86c.

- In the Decarbonization category, Peninsula Clean Energy, along with our partners East Bay Community Energy and Silicon Valley Clean Energy, were awarded the runners-up for our Reach Code Initiative. Recognition for the excellent work in this area goes to Rafael Reyes and Blake Herrschaft.

Presentations and Speaking Events

One of my goals and objectives from the board is to seek out speaking opportunities to evangelize the work we are doing at PCE, and in particular, the work we are doing on the 24/7 renewables goal. With the January 10 publishing of "Achieving 24/7 Renewable Energy by 2025", the number of opportunities has increased:

- I recorded a podcast on The Decarbonization Race, sponsored by Cleartrace. The podcast, "Pioneer Portrait: Inside Jan Pepper's Push to Provide 24/7 Renewable Energy for Californians" was published on June 12 and can be found here.

- On June 22, I will be presenting our 24/7 results to an international audience at the UN Energy Compact Webinar: "This webinar will focus on two great examples of businesses on a journey to achieve 24/7 CFE (carbon free energy) and decarbonization. Peninsula Clean Energy, a community choice aggregator serving

21 cities and towns in the Bay Area set a goal to deliver 100% renewable energy to match demand on an hour-by-hour basis by 2025. NEOM Energy is currently pursuing groundbreaking efforts in building a megacity in Saudi Arabia powered by 100 percent clean energy, through renewable solar, wind, and green hydrogen-based energy."

- On June 27, I will be presenting our 24/7 renewable energy work at a workshop on "Loads, Resources and Reliability with more 24/7 Carbon Free Energy", sponsored by the Regulatory Assistance Project (RAP). "The goal of this webinar is to begin a discussion regarding the grid and resource data required to effectively plan for and integrate 24/7 CFE transition portfolios."

California Community Power (CC Power)

Peninsula Clean Energy has been participating in an ad hoc committee at CC Power to start actively gathering information on the opportunity to contract for offshore wind due to be developed offshore California toward the end of this decade. To that end, CC Power issued a Request for Information (RFI), with responses received from 4 of the BOEM (Bureau of Ocean Energy Management) Lease-Holders and a renewable energy developer with off-shore wind experience. Mehdi Shahriari and Roy Xu from the PCE power resources team have been actively engaged with the CCA working group along with representatives from 3CE and RCEA. I have been participating on the board level Ad Hoc Committee. A presentation on the activities to date and recommendations on next steps will be made at the CC Power board meeting on June 21.

Other Meetings and Events Attended by CEO

Attend weekly and monthly CalCCA Board and Executive Committee meetings.

Attend monthly California Community Power (CCPower) board meetings.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 16, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Operating Officer, Peninsula Clean Energy Authority
Nelly Wogberg, Executive Assistant to the Chief Executive Officer, Board Clerk, and Office Manager

SUBJECT: Recognition of Chief Executive Officer, Jan Pepper Upon Retirement

RECOMMENDATION:
Honor and recognize contributions made by Chief Executive Officer, Jan Pepper, on her retirement.

BACKGROUND:
The Peninsula Clean Energy Authority, founded in 2016, is the community choice aggregation (CCA) agency for San Mateo County and the City of Los Banos. Jan Pepper joined Peninsula Clean Energy in May 2016 as the first employee and founding Chief Executive Officer of the agency. Under her leadership, Peninsula Clean Energy has grown to a team of nearly 40 professionals and is a recognized leader within the community choice energy industry. Notable Peninsula Clean Energy accomplishments under Jan's leadership include:

- Saving PCE customers $107 Million since 2016
- Reducing greenhouse gas emissions from electricity by 98% as compared to 2016 emissions
- Publishing two industry-leading White Papers on 100% Renewable Energy on a 24/7 time-coincident basis
- Serving as a founding CCA Board member of Cal-CCA and California Community Power
- Expanding Peninsula Clean Energy service territory to include the City of Los Banos in 2020
- Developing and offering robust energy programs for residential and commercial customers. Noteworthy programs have included:

- Community Outreach Grants
- EV Ride-Hailing Program with Lyft
- Used and New EV Rebates
- Building Electrification Programs and Awards
- Home Upgrade Program
- Creation of a power portfolio that includes over 800 MW of new renewable power including development of Wright Solar in Los Banos, the largest utility scale solar project developed on behalf of a CCA in California

Jan plans to stay engaged in the energy and utility industry and will support Peninsula Clean Energy as an advisory consultant over the next six months, ensuring a seamless leadership transition and advancing Peninsula Clean Energy's 24/7 goals.

DISCUSSION:
Members of the Board are invited to share words of appreciation for Jan Pepper.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 12, 2023
COMMITTEE MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Andy Stern, Interim Chief Financial Officer

SUBJECT: Proposed Fiscal Year 2023-2024 Budget and 5-year Projections

RECOMMENDATION:
Approve Proposed Fiscal Year 2023-2024 (July 1, 2023, through June 30, 2024) budget with an amount of $350,657,317 as a not-to-exceed amount of Total Operating Expenses.

BACKGROUND:
On May 16, 2023, Staff presented a draft Fiscal Year 2023-2024 budget to the Audit & Finance Committee to solicit comments and input. Staff presented the same draft budget to the full Board of Directors on May 25, 2023. Staff then presented a version of the budget updated with the most current assumptions to the Audit and Finance Committee and to the Executive Committee in separate meetings on June 12, 2023.

DISCUSSION:
Fiscal Year 2023-2024 (July 1, 2023, through June 30, 2024) budget presentation and details will be provided for review. The bottom-up approach included discussions with the department heads to develop their areas of the budget and with the Peninsula Clean Energy CEO and COO to include cross-cutting elements of the budget. The final budget has been updated to reflect additional refinement of select revenue and expense categories.

At its meeting on June 8, 2023, the Citizens Advisory Committee made the following recommendation:

> *The CAC appreciates the significant work that went into developing the budget and the budget details that were shared with us. We support the creation of an ad-hoc subcommittee, including a CAC member, to make a recommendation on what to do with excess FY24 funds. We would like to receive programmatic budget information in order to continue to advise on the potential uses of the excess funds, specifically focused on programmatic funding moving forward. The CAC would like to recommend Steven Booker to serve on that subcommittee.*

The resolution for Board approval reflects a Not-to-Exceed level of Total Operating Expenses allowing for various categories to be above or below the planned level as long as the Total Operating Expenses do not exceed the requested level of $350,657,317 for the full Fiscal Year 2023-2024.

ATTACHMENTS:

The final version of the proposed Fiscal Year 2023-2024 Budget and 5-year Projections will be distributed during the meeting.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION THAT THE BOARD OF DIRECTORS APPROVE THE FISCAL YEAR 2023-2024 BUDGET WITH TOTAL OPERATING EXPENSES NOT TO EXCEED $350,657,317

RESOLVED, by the Board of Directors of the Peninsula Clean Energy Authority (PCEA) of the County of San Mateo, State of California, that

WHEREAS, PCEA Staff reviewed a draft budget for Fiscal Year 2023-2024 and the underlying assumptions with the Audit and Finance Committee at its meeting on May 16, 2023 to solicit input and recommended changes, and;

WHEREAS, PCEA Staff reviewed a draft budget for Fiscal Year 2023-2024 and the underlying assumptions with the Board of Directors at its meeting on May 25, 2023 to solicit input and recommended changes, and;

WHEREAS, PCEA Staff reviewed an updated version of the budget, presented as the proposed and final version of the budget for the Fiscal Year 2023-2024 with the most updated and current information available with the Audit and Finance Committee on June 12, 2023, and;

WHEREAS, the Audit and Finance Committee of the Peninsula Clean Energy Authority reviewed such final version of the budget for Fiscal Year 2023-2024 and

approved a resolution at its meeting on June 12, 2023 recommending to the Board of Directors approval at the Board's meeting on June 22, 2023.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the PCEA Board of Directors approves the Fiscal Year 2023-2024 budget with Total Operating Expenses not to exceed $350,657,317.

* * * * * *

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 9, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Roy Xu, Director of Power Resources
Sara Maatta, Power Resources and Compliance Manager

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement and any necessary ancillary documents, including potential Replacement PPA(s) with the same terms and conditions as the agreement presented to the Board except for any necessary administrative changes, with SunZia Wind PowerCo LLC or an affiliate, with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about September 30, 2026, in an amount not to exceed $858 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement and any necessary ancillary documents, including potential Replacement PPA(s) with the same terms and conditions as the agreement presented to the Board except for any necessary administrative changes, with SunZia Wind PowerCo LLC or an Affiliate of SunZia Wind PowerCo LLC, with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about September 30, 2026, in an amount not to exceed $858 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from 24/7 renewable energy by 2027 on a 99% time-coincident basis. One critical technology that will help Peninsula Clean Energy to meet this goal is wind energy. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy should pursue as much capacity from wind resources as possible, and particularly, that Peninsula Clean Energy should pursue capacity from out-of-state wind resources. Out-of-state wind resources tend to have excellent fit with

Peninsula Clean Energy's portfolio, because out-of-state wind tends to generate energy in winter and overnight periods, when the solar resources in our portfolio do not generate as much energy.

2021 Renewable Energy and Storage Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in late 2021 targeting procurement of renewable energy and storage resources to help meet our internal goals and regulatory requirements.

Peninsula Clean Energy received a robust response to the RFO from 34 participants for 70 different projects. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

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

Staff reviewed the project with the CEO and then entered into exclusive negotiations with the project. Since early 2022, Peninsula Clean Energy has worked with the project developer on negotiating the Power Purchase Agreement.

Additionally, staff met with a subcommittee of Board members convened by Staff in June 2023 to review the recommended contract with SunZia Wind PowerCo LLC.

Overview of Project

Project Name	SunZia Wind
Technology	Wind
Capacity	3,515 MW (Total project)
Peninsula Clean Energy Share	220 MW
Annual Generation	694,477 MWh
Commercial Operation Date	9/30/2026
Project Owner	SunZia Wind PowerCo LLC
Developer	Pattern Energy Group LP ("Pattern")
Location	Lincoln, Torrance, and San Miguel Counties, New Mexico

The SunZia Wind Project is a new wind project with a total capacity of 3,515 MW located in New Mexico in the counties of Lincoln, Torrance, and San Miguel. The project is located on over 1,000,000 acres of private and state-owned land. The project will interconnect to a new SunZia Transmission Line that is also being constructed by Pattern. The SunZia Transmission Line will carry the project energy to the Pinal Central substation in central Arizona, and Pattern has secured firm transmission rights with third party transmission

providers to deliver energy to the Palo Verde Substation in Arizona. The Palo Verde Substation is considered to be a part of CAISO, and Peninsula Clean Energy can receive delivery of the energy at the Palo Verde Substation. Pattern will retain the scheduling coordination rights for the wind project.

The SunZia Wind project is eligible for Resource Adequacy as long as Peninsula Clean Energy can successfully obtain Import Allocation Rights at Palo Verde from CAISO. Peninsula Clean Energy is confident that we can obtain at least a moderate amount of the necessary Import Allocations Rights, which will allow us to count a substantial portion of the SunZia Wind capacity for Resource Adequacy purposes.

The Commercial Operation Date is September 30, 2026. The project is expected to start construction later this year.

Under the contract, Peninsula Clean Energy will purchase the renewable energy generated by our share of the facility at a fixed-price rate per MWh with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy will receive energy, renewable energy credits, and (contingent on receiving Import Allocation Rights from CAISO) resource adequacy. The output from the project represents approximately 13% of Peninsula Clean Energy load over the contract term.

Developer

SunZia Wind PowerCo LLC is a wholly owned, indirect subsidiary of Pattern. The project is being developed by Pattern, which has a team with a wide range of experience developing and operating various energy technologies. Pattern owns over 6 GW of operating wind, solar and storage projects, including the 1,050 MW Western Spirit Wind Project located close to SunZia in New Mexico. Pattern currently operates over 6 GW of renewable energy projects in the US.

Environmental Review

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

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

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

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database[1] (PAD-US).

The primary land use approval document (Record of Decision) was issued by the Bureau of Land Management on May 18, 2023.

Workforce Requirements

Pattern Energy Group LP will pay New Mexico prevailing wage and provide full health care coverage to all onsite employees. Pattern is currently in discussion with the International Brotherhood of Electrical Workers regarding the project construction.

Project Bifurcation or Transition and Replacement PPA(s)

In order to facilitate the financing of the project, SunZia Wind PowerCo LLC requires the ability to bifurcate or transition the project to an Affiliate of SunZia Wind PowerCo LLC at a future date. If such bifurcation or transition were to occur, the Affiliate would need to enter into one or two Replacement PPAs with Peninsula Clean Energy and terminate the original PPA. The Replacement PPAs would have the same terms and conditions as the original PPA except for those administrative changes necessary to effectuate the transition or bifurcation. The Replacement PPA(s) need to be pre-approved by Peninsula Clean Energy's Board for this transaction to work. The Board is being asked to approve the execution of such Replacement PPA(s) as part of tonight's motion.

DISCUSSION:

The Strategic Plan approved by the Board set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2027 that aligns supply and consumer demand on a 24x7 basis". Out-of-state wind energy will play a key role in meeting Peninsula Clean Energy's renewable energy goals by providing energy during winter and overnight periods, an excellent complement to the solar resources already in our portfolio.

Staff recommends that the Board approve the SunZia Wind PPA, including pre-approving a potential Replacement PPA with the same terms and conditions as the agreement presented to the Board except for any necessary administrative changes.

FISCAL IMPACT:

[1] USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

The fiscal impact of the SunZia Wind project will not exceed $858 million over the 15-year term of the Agreement. There will be no fiscal impact to the FY 23/24 budget.

STRATEGIC PLAN:

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

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2027 that aligns supply and consumer demand on a 24/7 basis
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

ATTACHMENTS:

SunZia Wind Power Purchase Agreement (Redacted Version)

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AGREEMENT AND ANY NECESSARY ANCILLARY DOCUMENTS, INCLUDING POTENTIAL REPLACEMENT PPA(S) WITH THE SAME TERMS AND CONDITIONS AS THE AGREEMENT PRESENTED TO THE BOARD EXCEPT FOR ANY NECESSARY ADMINISTRATIVE CHANGES, WITH SUNZIA WIND POWERCO LLC WITH A POWER DELIVERY TERM OF 15 YEARS STARTING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT SEPTEMBER 30, 2026, IN AN AMOUNT NOT TO EXCEED $858 MILLION.

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

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

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

WHEREAS, Peninsula Clean Energy conducted a request for offers for renewable energy and storage resources including standalone storage and engaged in negotiations for the SunZia Wind project; and

WHEREAS, Peninsula Clean Energy seeks to execute a Power Purchase Agreement (PPA) to procure renewable energy from 220 MW of capacity from the SunZia Wind project, based on the project's desirable offering of products, pricing, and terms; and

WHEREAS, in order to facilitate project financing, SunZia Wind PowerCo LLC requires the ability to bifurcate or transition the project to an Affiliate of SunZia Wind PowerCo LLC at a future date, and requires Peninsula Clean Energy to pre-approve a Replacement PPA(s) that would effectuate such project bifurcation or transition; and

WHEREAS, any Replacement PPA(s) would have the same terms and conditions as the agreement presented to the Board except for any necessary administrative changes; and

WHEREAS, staff is presenting to the Board for its review the PPA, reference to which should be made for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreement and any other ancillary documents required for said purchase of renewable energy from SunZia Wind PowerCo LLC; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreement is contingent on the SunZia Wind PowerCo LLC Board approving the Agreement's terms consistent with those presented to the Board.

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

Execute the Agreement and any ancillary documents, including potential Replacement PPA(s) with the same terms and conditions as the agreement presented to the Board except for any necessary administrative changes, with SunZia Wind PowerCo LLC or an affiliate of SunZia Wind PowerCo LLC with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed $858 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: SunZia Wind PowerCo LLC, a Delaware limited liability company

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

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of up to [3,515] MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Completion Date
Completed Milestones	
Site Control	October 21, 2022
Executed Interconnection Agreement	March 27, 2023
Bureau of Land Management Record of Decision for SunZia Transmission Line	May 18, 2023
Planned Milestones	
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Expected Commercial Operation Date	March 31, 2026
Guaranteed Milestones	
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Delivery Term: Fifteen (15) Contract Years

Guaranteed Capacity: 220 MW at the Delivery Point

Delivery Term Expected Energy:

Contract Years	Expected Energy (MWh)
1-15	[redacted]

Monthly Expected Energy:

Month	Expected Energy (MWh)
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]

Contract Price: The Contract Price for the Product shall be:

Contract Year	Contract Price ($/MWh)
1 – 15	[redacted]

Product:

- x Delivered Energy
- x Green Attributes (Portfolio Content Category 1)
- x Future Environmental Attributes
- x Capacity Attributes

Scheduling Coordinator: Seller / Seller Third Party

Development Security: [redacted]

Performance Security: [redacted]

Notice Addresses:

Seller:

Company Name: SunZia Wind PowerCo LLC
Address: 1088 Sansome St.
San Francisco, CA 94111
Attention: General Counsel

Phone No.: (415) 283-4000
Email: andy.murray@patternenergy.com

Scheduling:

Company Name: SunZia Wind PowerCo LLC
Address: 888 Westheimer Road, Suite 213
Houston, TX 77006
Attention: Manager 24/7 Operations Control Center

Fax No.: (281) 694-2848
Email: patternocc@patternenergy.com and Realtimeoperations@patternenergy.com

Buyer:

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

Phone No.: [redacted]
Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy Authority
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: David Silberman, General Counsel
Fax No.: (650) 363-4034
Phone No.: (650) 363-4749
Email: dsilberman@smcgov.org

[*Signatures on following page.*]

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

SELLER	BUYER
SunZia Wind PowerCo LLC	Peninsula Clean Energy Authority
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("**Agreement**") is entered into as of [June __, 2023] (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.13.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit D.

"**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.

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

"**Alternative Delivery Point**" means a Scheduling Point, as defined in the CAISO Tariff, that is agreed upon by Buyer and Seller other than the Delivery Point.

"**Approved Vendor Forecast**" means the forecast of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, provided by either (a) [redacted] or (b) any other reputable third-party vendor that is registered to do business in California, experienced in providing and verifying wind energy generation forecasts, and not an Affiliate of Seller.[2]

[redacted]

"**Attestation**" has the meaning set forth in Section 4.1(b).

"**Availability Incentive Payment**" has the meaning set forth in the CAISO Tariff.

"**Available Capacity**" means the capacity from Buyer's Share of the Facility, expressed in whole MWs, that is available at a particular time to generate Energy.

"**Balancing Authority**" has the meaning set forth in the CAISO Tariff.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Bid**" has the meaning set forth in the CAISO Tariff.

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Default**" means a failure by Buyer to perform its obligations hereunder.

"**Buyer's Share**" means the percentage that is equal to the quotient of the Guaranteed Capacity divided by the Installed Capacity, not to exceed one hundred percent (100%), as such percentage may change from time to time with changes to the Installed Capacity, if applicable.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use, in accordance with the CAISO Tariff.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" has the same meaning as "Operating Instruction" as defined in the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, as it may be modified from time to time; provided that, for the purposes of this Agreement, the CAISO Tariff includes associated Business Practice Manuals (BPMs) and Operating Procedures (in each case as defined in the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

[redacted]

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

"**CEC Final Certification and Verification**" means that the CEC has certified the Facility as an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Ninth Edition* (or its successor), and that all Energy generated by the Facility 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 Final Certification and Verification.

"**Change of Control**" means any circumstance in which the Ultimate Parent ceases to have Control over Seller; provided that (a) it shall not be a Change of Control of Seller if the Ultimate Parent, itself or together with other Persons that would meet the requirements of the definition of Qualified Transferee (or an entity that Controls any such other Person), retains either (i) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general

meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller, or (ii) the right to direct the policies or operations of Seller, and (b) any direct or indirect change in the Control of Seller shall not be a Change of Control hereunder if the entity acquiring Control of Seller, directly or indirectly, is a Qualified Transferee and Buyer is given written Notice of the change of Control within five (5) Business Days of its occurrence.

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

"**Commercial Operation Date**" means the date on which Commercial Operation is achieved.

"**Commercial Operation Delay Damages**" means an amount equal to [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.13.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.13.

"**Confidential Information**" has the meaning set forth in Section 19.1.

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Revenues**" has the meaning set forth in Section 4.5(b).

"**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.

"**Control**" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"**Cover Sheet**" means the cover sheet to this Agreement.

"**COVID-19**" means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or the efforts of a Governmental Authority to combat or mitigate such disease.

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

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

"**CRS**" has the meaning set forth in Section 4.1(b).

"**Curtailment Order**" means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy from the Facility to the Delivery Point;

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

c) a curtailment ordered by CAISO or a Transmission Provider due to scheduled or unscheduled maintenance on the CAISO's or Transmission Provider's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at the Delivery Point; or

d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Energy from the Facility or deliveries of Delivered Energy pursuant to a Curtailment Order. "Curtailment Period" shall not include Settlement Intervals during which Seller reduces generation of Energy from the Facility or deliveries of Delivered Energy as a result of a Market Curtailment Period.

"**Daily Delay Damages**" means an amount equal to [redacted]

[redacted]

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

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

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

"**Deemed Delivered Energy**" means (a) the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point as Delivered Energy but that is not produced by the Facility and delivered to the Delivery Point during a Market Curtailment Period, [redacted]

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

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delivered Energy**" means, in any Settlement Period, Buyer's Share of (a) the Energy produced by the Facility and delivered to the Delivery Point as measured in MWh, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use, or (b) if a portion of the Facility output is curtailed in any Settlement Period but Buyer's Share is not curtailed, then Delivered Energy for such Settlement Period will instead be equal to Buyer's Share of the Energy that the Facility would have been able to produce and deliver to the Delivery Point if the Facility was not so curtailed [redacted] and, in each case of (a) and (b), subject to the Hourly Delivery Cap, plus all Replacement Energy delivered as part of Prospective Replacement Product.

"**Delivery Point**" has the meaning set forth in Exhibit A; provided, the Delivery Point may be an Alternative Delivery Point if mutually agreed to by the Parties pursuant to Section 4.5(b).

"**Delivery Term**" shall mean the period of Contract Years specified 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.

[redacted]

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

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

"**Dynamic Transfer**" means either a Pseudo-Tie or a Dynamic Schedule.

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

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

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled between Seller and any Transmission Provider or Balancing Authority between the Facility and the Delivery Point.

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

"**Energy**" means electrical energy, measured in MWh.

"**Energy Shortfall Amount**" has the meaning set forth in Exhibit D.

"**E-Tag**" has the meaning set forth in the CAISO Tariff.

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

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

"**Expected Energy**" has the meaning set forth as "Delivery Term Expected Energy" on the Cover Sheet, as may be adjusted pursuant to Section 4.7(a).

"**Facility**" means the facility described more fully in Exhibit A attached hereto.

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

"**Fitch**" means Fitch Ratings, Inc., or its successor.

"**Floor Price**" means [redacted]

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

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.8(a).

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

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the subject 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., Palo Verde), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

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

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to Buyer's Share of 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: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) 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; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives, including in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"**Green-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 3.5, updated December 15, 2020, as may be further amended from time to time.

"**Green Tag**" means a certificate or other instrument recognized by a Governmental Authority, with one (1) Green Tag representing the Green Attributes associated with one (1) MWh of Energy.

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

"**Guaranteed Capacity**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Commercial Operation Date**" has the meaning set forth in Exhibit B.

[redacted]

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.7(b).

"**Guaranteed Energy Production Damages**" has the meaning set forth in Exhibit D.

"**Guaranteed RA Amount**" means Buyer's Share of the Net Qualifying Capacity of the Facility.

"**Hourly Delivery Cap**" means the maximum amount of Energy and associated Renewable Energy Credits and Green Tags delivered to the Delivery Point and sold to Buyer in any given hour under this Agreement, which amount shall be equal to Buyer's Share *multiplied by* 2,131 MW.

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

"**Indemnified Party**" has the meaning set forth in Section 17.1(a).

"**Indemnifying Party**" has the meaning set forth in Section 17.1(a).

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

"**Installed Capacity**" means the actual generating capacity of the Facility, measured at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement) and adjusted for ambient conditions on the date of the performance test, as evidenced by a certificate substantially in the form attached as Exhibit G hereto provided by Seller to Buyer, as it may be updated from time to time by delivery of a subsequent certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto.

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

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the PTO's 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 Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the PTO's Transmission System in accordance with the Interconnection Agreement.

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

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

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

"**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, and includes the CAISO Tariff.

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

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

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

"**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 subject 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

[redacted]

comparable transactions at liquid trading hubs (e.g., Palo Verde), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" has the meaning set forth in Exhibit D.

[redacted]

"**Market Curtailment Period**" means the period of time, as measured using then-current Settlement Intervals, during which Seller reduces generation of Energy from the Facility or deliveries of Delivered Energy during a Settlement Period or Settlement Interval [redacted] provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

"**Milestones**" means the development activities for significant permitting, interconnection, financing, construction and operating milestones set forth in the Cover Sheet.

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

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour measured in alternating current.

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

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

"**Net Qualifying Capacity**" means the net capacity of a resource that can be counted towards system Resource Adequacy Requirements, as identified from time to time by the CAISO Tariff, the Resource Adequacy Rulings, or by another decision of a Governmental Authority having jurisdiction.

"**Non-Availability Charge**" 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 this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail) in accordance with Section 9.2.

"**Operating Restrictions**" means the operational characteristics of the Facility set forth in Exhibit M.

[redacted]

"**Owner**" has the meaning set forth in Section 2.2.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains the Transmission System or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.7(b).

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

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

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

"**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.

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

"**Production Tax Credits**" or "**PTCs**" means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

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

"**Project**" has the same meaning as Facility.

"**Project Bifurcation**" has the meaning set forth in Section 2.3.

"**Project Transition**" has the meaning set forth in Section 2.3.

[redacted]

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

"**Pseudo-Tie**" has the meaning set forth in the CAISO Tariff.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of Energy from the Facility at the time that was not produced and delivered to the Delivery Point during a Market Curtailment Period (*i.e.*, Deemed Delivered Energy), [redacted] Seller shall provide documentation calculating the PTC Amount that is reasonably acceptable to Buyer.

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

"**Qualified Transferee**" means [redacted]

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

[redacted]

[redacted]

"**RA Guarantee Date**" means [redacted]; provided, that the RA Guarantee Date shall be extended on a day-for-day basis, for a period not to exceed [redacted], if the Facility's inability to provide Resource Adequacy Benefits by such date is due to one or more CAISO delays that are not attributable to the actions or omissions of Seller.

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Shortfall**" means the difference, expressed in kW, of (a) the Guaranteed RA Amount *minus* (b) the Resource Adequacy Benefits of the Facility for such month and any Replacement RA provided for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy Benefits.

"**RA Shortfall Amount**" has the meaning set forth in Section 3.9.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(a).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Remedial Action Plan**" has the meaning set forth in Section 2.6.

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

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

"**Replacement Energy**" means Energy [redacted]

[redacted]

[redacted] and has green attributes that have the same or comparable value, including with respect to the timeframe for retirement of such green attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year [redacted]

"**Replacement Green Attributes**" means Renewable Energy Credits meeting the RPS requirements for Portfolio Content Category 1 associated with the Replacement Energy.

"**Replacement PPA**" means each power purchase agreement entered into by Buyer, as purchaser thereunder, and the applicable Owner, as seller thereunder, pursuant to the terms of Section 2.3.

[redacted]

"**Replacement RA**" means Resource Adequacy Benefits, if any, substantially equivalent or superior to those that would have been provided by the Facility with respect to the applicable Showing Month. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**Resource Adequacy Benefits**" means the rights and privileges attached to Buyer's Share of the Capacity Attributes available from the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent ruling or decision by the CPUC or any other entity having jurisdiction including CAISO, and shall include attributes of the Facility that provide system Resource Adequacy Benefits.

"**Resource Adequacy Requirements**" means the resource adequacy requirements applicable to a load serving entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other entity having jurisdiction.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent ruling or decision by the CPUC or any other entity having jurisdiction including CAISO, as the same may be amended or modified from time-to-time.

"**Resource Data Template**" has the meaning set forth in the CAISO Tariff.

[redacted]

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

"**Schedule**" means the actions of Seller and/or its designated representatives, or Scheduling Coordinator, including Seller's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity of Energy to be delivered in any given Settlement Interval on any given day or days at a specified Delivery Point.

"**Scheduled Energy**" means the Energy from Buyer's Share of the Facility that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1.

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

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

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

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

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

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

"**Shared Facilities Agreements**" has the meaning set forth in Section 4.12.

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

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of Buyer's compliance with the requirements of the CPUC and CAISO for Buyer's Resource Adequacy

Requirements. For illustrative purposes only, pursuant to the applicable CPUC Decisions in effect as of the Effective Date, the monthly 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 to Buyer an executed certificate of the Construction Start Date, substantially in the form attached as Exhibit H hereto.

"**Site Control**" means that Seller: (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.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"SunZia Transmission Line" means that certain 3,000-MW high-voltage (+/-525-kV) transmission line originating at the Facility in New Mexico and terminating near Phoenix, Arizona. The western terminus of the line will connect to the 500-kV Pinal Central Substation.

"SunZia Wind North" means the portion of the Facility located on the northern portion of the Site, as further described and shown on the map in Exhibit A.

"SunZia Wind South" means the portion of the Facility located on the southern portion of the Site, as further described and shown on the map in Exhibit A.

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

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

"**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.

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

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

"**Test Energy**" means Buyer's Share of the Delivered Energy (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer from the point of interconnection or to or from the Delivery Point, including the Participating Transmission Owner.

"**Transmission System**" means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service downstream from the Facility's point of interconnection and/or up to and downstream from the Delivery Point.

[redacted]

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

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

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2
TERM; FACILITY OWNERSHIP; REPLACEMENT PPA; 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 19 shall remain in full force and effect for [redacted] following the termination of this Agreement; all indemnity rights shall remain in full force and effect for [redacted] following the termination of this Agreement; all audit rights shall remain in full force and effect for [redacted] following the termination of this Agreement; and Buyer's obligation to return to Seller the Development Security and/or the Performance Security, less any amounts drawn in accordance with this Agreement, shall remain in full force and effect following the termination of this Agreement until so returned.

2.2 **Facility Ownership**. Buyer acknowledges that, as of the Commercial Operation Date, the Facility will be owned by one or more of Seller's Affiliates (each an "**Owner**") that will be, in turn, owned by Seller, and the Facility will not be owned directly by Seller. As of the Commercial Operation Date, Seller will have, and throughout the Delivery Term Seller will maintain, such agreements with Seller's Affiliates and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Owners (including in respect of Seller performing the obligation or causing Owners to perform the obligation). Seller will maintain its ownership of the Owners throughout the Delivery Term and will not sell or transfer Owners without Buyer's consent, which consent shall not be withheld or delayed unreasonably.

[redacted]





2.4 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits F and G;

(b) If, with respect to each of the following contracts, it is required in order to operate the Facility and for Seller to meet its other obligations hereunder, a Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO, an agreement governing the terms of Dynamic Transfers between CAISO and the host Balancing Authority for the Facility, and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(d) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date.



(f) The CAISO has provided notification supporting Commercial Operation.

(g) Seller has provided a certificate signed by one of its authorized representatives on its behalf stating that (i) all applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained, and (ii) Seller is in compliance with such authorizations, approvals and permits and they are in full force and effect.

(h) Seller has received CEC Precertification;

(i) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, Qualified Reporting Entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(j) The Scheduling Coordinator has the ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets in respect of the Facility;

(k) Seller has delivered the Performance Security to Buyer;

(l) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages due and owing under this Agreement, if any; and

(m) Seller has delivered to Buyer an officer's certificate stating that to the best of Seller's knowledge after reasonable investigation, Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility using Forced Labor in violation of Section 13.4.

2.5 **Progress Reports**. The Parties agree time is of the essence in regards to this Agreement. Within fifteen (15) Business Days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress and the achievement of Milestones. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to availability and confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Buyer. [redacted] When available, Seller shall promptly deliver to Buyer a copy of the wind resource report prepared by an independent engineer and used to support financing with respect to the Facility.[8]

2.6 **Remedial Action Plan**. If Seller [redacted], Seller shall submit to Buyer, [redacted] a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and 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, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Except as set forth in Section 11.1(b)(ii), so long as Seller is in compliance with its obligations under this Section 2.6, its failure to meet any Milestone shall not be a default under this Agreement.

[redacted]

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**.

Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Product produced by or associated with the Facility. Buyer shall re-sell all of the Energy purchased hereunder, and may, at its sole discretion, re-sell or use for another purpose all or a portion of the remainder of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement Product and Replacement RA, unless otherwise permitted as set forth in this Agreement.

3.2 **Sale of Green Attributes**. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes attributable to Delivered Energy (including those attributable to Test Energy).

3.3 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a) Delivered Energy. [redacted].

(b) Deemed Delivered Energy. [redacted].

(c) [redacted]

(d) Deliveries in Excess of Buyer's Share. If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Delivered Energy, in excess of the product of the Hourly Delivery Cap and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("**Negative LMP Costs**").

3.4 **Imbalance Energy**. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Other than during a Market Curtailment Period, Seller shall use commercially reasonable

efforts to deliver Energy in accordance with the Scheduled Energy. Any CAISO costs or revenues assessed as a result of Imbalance Energy shall be solely for the account of Seller.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. The Parties shall promptly notify each other upon becoming aware of the existence of Future Environmental Attributes and, subject to the final sentence of this Section 3.6(a), Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Contract Price paid by Buyer under this Agreement, but Buyer shall bear all material incremental costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes. Seller shall have no obligation to incur material costs or alter the Facility or its operations in order for Buyer to realize the full value of such Future Environmental Attributes for its benefit unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all related costs.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) the determination of any additional costs to be borne by Buyer, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy**. If and to the extent the Facility generates Test Energy, no less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller may, at its option, notify Buyer of the availability of the Test Energy. Upon such Notice, Buyer may, at its option, purchase from Seller all Test Energy and any associated Green Attributes on an as-available basis. As compensation for any such Test Energy and Green Attributes, Buyer shall pay Seller for each MWh of Test Energy an amount equal to [redacted]. If Buyer does not, within five (5) Business Days of Seller's Notice, agree to purchase Test Energy, Seller may sell such Test Energy, and any related products or attributes, to third parties and keep any and all revenues (and bear any and all costs) associated with such sales.

3.8 **Capacity Attributes**.

(a) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Throughout the Delivery Term, subject to Section 3.13, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits at the Delivery Point. Throughout the Delivery Term, subject to Section 3.8(e), Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement, including, if requested by Buyer, submitting Supply Plans in accordance with CAISO and CPUC requirements.

(d) For the duration of the Delivery Term, Seller shall maintain interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Capacity.

(e) Buyer acknowledges that it will be required to take action and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes associated with the Product. Seller makes no representations or warranties that Buyer may be able to utilize Capacity Attributes for Resource Adequacy Benefits or other purposes.

(f) Seller may provide Replacement RA prospectively for any month in which Seller anticipates having an RA Shortfall Month by providing Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit K at least [redacted] before the applicable CPUC operating month in which Seller anticipates the RA Shortfall; [redacted].

3.9 **Resource Adequacy Failure**. For any calendar month in which Seller fails to deliver to Buyer all of the Resource Adequacy Benefits hereunder (such deficiency in delivery of Resource Adequacy Benefits for such month, expressed in kW, the "**RA Shortfall Amount**"), Seller shall be liable for liquidated damages ("**RA Deficiency Amount**") [redacted]

3.10 **CEC Certification and Verification**. Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to

obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and, subject to Section 3.13, maintain throughout the remainder of the Delivery Term the CEC Final Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller's application for CEC Precertification or CEC Final Certification and Verification for the Facility. [redacted].

3.11 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **California Renewables Portfolio Standard**. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

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

(a) CEC Certification and Verification;

(b) Green Attributes;

(c) WREGIS; and

(d) Capacity Attributes.

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

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

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

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

The term "commercially reasonable efforts" as used in Sections 3.11 and 4.8(h) means efforts consistent with and subject to this Section 3.13.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff (as applicable), (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. Seller shall effectuate the delivery of Delivered Energy through Dynamic Transfers, and shall be responsible for, at Seller's sole cost, securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. To support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified, upon request of Buyer, Seller shall submit a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor; provided, to the extent Seller incurs any material third-party costs and/or expenses to prepare or submit such Attestations, Buyer shall reimburse Seller for such costs and/or expenses. Seller may elect to invoice Buyer separately for any such costs and/or expenses (in which case Buyer shall pay such invoices within thirty (30) days after Seller's delivery of such invoices) or include such costs and expenses in the monthly invoices submitted to Buyer in accordance with Section 8.1. The Attestations shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Energy was generated, whichever is later. Notwithstanding any provision of this Section 4.1(b), Seller provides no representation or warranty of any kind whatsoever regarding the eligibility of the Green Attributes to be Green-e Certified.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Scheduling Coordinator Responsibilities**.

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Subject

to compliance with applicable Law, [redacted]

(b) Floor Price. Seller may, but is not required to, reduce deliveries of Product during periods in which the LMP in the Day-Ahead Market or the Real-Time Market at the Delivery Point is less than the Floor Price; provided, that if Seller does not reduce deliveries of Product during such periods, Seller shall be compensated for such Delivered Energy pursuant to Section 3.3(a) and such Delivered Energy shall not be considered to be Deemed Delivered Energy. [redacted]

(c) CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including costs and revenues associated with CAISO dispatches, Bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

(d) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

4.4 **Forecasting**. Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use reasonable efforts to forecast the Available Capacity and expected Delivered Energy accurately and in accordance with Prudent Operating Practice and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Delivered Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of expected Delivered Energy, by hour, for the following calendar year in a form substantially similar to the table attached hereto as Exhibit L-1 or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly expected Available Capacity and expected Delivered Energy, for each day of the following month in forms substantially similar to the tables attached hereto as Exhibits L-2 and L-3, respectively.

(c) Daily Forecast of Available Capacity and Expected Energy. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of its best estimate of (i) Available Capacity and (ii) the Buyer's Share of the Approved Vendor Forecast, not to exceed the Hourly Delivery Cap, 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 immediately succeeding day, each succeeding non-Business Day and the next Business Day.

(d) Real-Time Available Capacity and Expected Energy. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or one (1) MWh, as applicable, or more in (i) Available Capacity or (ii) the Buyer's Share of the Approved Vendor Forecast, not to exceed the Hourly Delivery Cap, 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 Available Capacity or, if applicable, Buyer's Share of the Approved Vendor Forecast changes by at least one (1) MW or one (1) MWh as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such real-time forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity or Approved Vendor Forecast, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of becoming aware of the Forced Facility Outage. Seller shall inform Buyer as soon as reasonably practicable of any developments that 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. These forecasts and changes to Available Capacity shall be communicated by email to Buyer, unless Buyer requests an alternative method of communications reasonably acceptable to Seller; provided that Buyer specifies such alternative method no later than sixty (60) days prior to the requested effective date for such alternative method.

4.5 **Dispatch Down/Curtailment**.

(a) General. Subject to Section 4.5(b), Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order; provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

(b) Alternative Delivery Point/Third-Party Sales. In the event that, and for so long as, Seller is unable to deliver all or a portion of the Product to Buyer at the Delivery Point, but is able to deliver Product to Buyer at one or more Alternative Delivery Points, such Alternative Delivery Points shall be considered the Delivery Point under this Agreement. Subject to the foregoing, (i) Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period or Market Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice, and (ii) Seller shall use commercially reasonable efforts to sell and deliver some or all of the Product during Market Curtailment Periods at a positive price to the extent that Seller may do so in compliance with applicable Law and Prudent Operating Practices. [redacted]

4.6 **Reduction in Delivery Obligation**.

For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit D:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by Scheduled Maintenance on the Facility.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration and extent (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by System Emergency, during any Force Majeure Event, upon Notice of a Curtailment Order, during a Market Curtailment Period, due to Prudent Operating Practice or otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement. [redacted]

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Force Majeure Event.

[redacted]

(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.

4.7 **Expected Energy and Guaranteed Energy Production**.

(a) The Expected Energy is the quantity of Product, as measured by Delivered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year; [redacted] provided further, that if, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and Seller subsequently installs additional capacity and/or network upgrades such that the Installed Capacity is equal to at least the Guaranteed Capacity pursuant to Exhibit B, the Expected Energy for the first Contract Year shall be adjusted on a pro rata basis based on the actual installed generating capacity at the Facility.

(b) Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of [redacted] ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to [redacted] of the annual average Expected Energy for the [redacted] Performance Measurement Period. The calculation will be performed once each Contract Year, beginning with the second anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver Energy as a result of any Force Majeure Events, System Emergencies, during periods when Seller suspends performance due to an Event of Default by Buyer, Curtailment Periods and Market Curtailment Periods; to effectuate the foregoing excuses, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Market Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit D in respect of Lost Output for other excuses. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, [redacted]

[redacted]

[redacted]

(d) If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall compensate Buyer with liquidated damages in the amount of Guaranteed Energy Production Damages calculated in accordance with Exhibit D;

[redacted]

[redacted]

[redacted]

[redacted]

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall satisfy its obligations pursuant to Section 4.2(b) and Section 4.8(g) by fulfilling its obligations under Sections 4.8(a) through (f) below.

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (**"Seller's WREGIS Account"**), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**") Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause itself or its agent to be designated as the Qualified Reporting Entity for the Facility. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate. WREGIS Certificates must be matched with E-Tags associated with the Dynamic Transfers.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility's metered data and matching E-Tags associated with the Dynamic Transfers.

(d) Due to the approximately ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this

Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**"). [redacted]. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission, with Seller taking the lead on the communications with WREGIS. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(h) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

[redacted]

4.9 [redacted]

4.10 [redacted]

4.11 [redacted]

4.12 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements.

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 delivery or making available to Buyer, including on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, the exempted Party shall provide the other Party with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If the exempted Party does not provide such documentation, then such Party shall indemnify, defend, and hold the other Party harmless from any liability with respect to Taxes from which such Party claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter for the following calendar year, a schedule of all planned outages or derates of the Facility for maintenance purposes that will cause the generation capacity of the Facility to be reduced [redacted] ("**Scheduled Maintenance**").

(b) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with Scheduled Maintenance, (i) within a single month, rather than across multiple months, and (ii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with Prudent Operating Practice or because such maintenance cannot be scheduled in a consolidated manner to avoid damage to the Facility, for health and safety reasons, to maintain equipment warranties, or in accordance with manufacturer recommendations.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit C Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility, including without limitation, if applicable, environmental clearance under the relevant environmental law from the local jurisdiction where the Facility will be constructed.

6.4 **Energy to Serve Station Use**. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that Seller is responsible for providing all Energy to serve Station Use.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy produced by the Facility using a CAISO Approved Meter. The CAISO Approved Meter shall be installed on the 500kV bus at the Seller's New Mexico switching station and maintained at Seller's cost. If the CAISO Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practice and CAISO or PTO requirements, as applicable. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data [redacted] to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO and/or the PTO, as applicable, the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO Approved Meter at the Facility.

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

[redacted]

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 deliver an invoice to Buyer for Product no later than [redacted] after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy for each Settlement Period during the preceding month, including the amount of Delivered Energy [redacted] as set forth in the first CAISO settlement statement for the prior month that includes meter data from the CAISO Approved Meter, the calculation of Deemed Delivered Energy and Adjusted Energy Production, the applicable Contract Price, the LMP in the Day-Ahead Market and Real-Time Market (if applicable for purposes of any calculations with respect to such invoice) at the Delivery Point for each Settlement Period, all CAISO costs and revenues for which Buyer is responsible (if any), the amount of Replacement RA delivered to Buyer (if any), any revenue and incremental costs associated with third-party sales of Product pursuant to Section 4.5(b), the PTC Amount (if any); (b) a reconciliation of hourly meter data, E-Tag data and associated calculations, including the lesser of each by hour, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (c) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Transfers; and (d) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format reasonably agreed upon by the Parties, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **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. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.3 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [redacted] after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date

of publication), plus [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.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the 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, including any related damages calculated pursuant to Exhibits B and D, 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 Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in

this Agreement, Seller shall deliver the Development Security to Buyer within [redacted] after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect; [redacted] Upon the earlier of (a) Seller's delivery of the Performance Security, and (b) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver the Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect and 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, Seller shall replenish the Performance Security within [redacted] Business Days after such draw. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written Notice to Buyer.

8.9 **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 or Performance Security, as applicable, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security, as applicable; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

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 on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

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, facsimile, or other electronic means), at the time indicated by the time stamp upon delivery once the receiving Party acknowledges receipt of such electronic communication; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address of the other Party provided on the Cover Sheet.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act, event or circumstance 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, event or

circumstance, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic [redacted]; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent the 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) [redacted] or (ix) failure to complete the Interconnection Facilities or network upgrades required to connect the Facility and to deliver Product to the Delivery Point by the Guaranteed Commercial Operation Date except to the extent such inability is caused by a Force Majeure Event [redacted]

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of 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, to the extent reasonably practicable, a mitigation plan for limiting or overcoming the impacts of the Force Majeure Event, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be unable to perform all or substantially all of its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

(a) with respect to a Party (the "**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 [redacted] after Notice thereof; [redacted]

[redacted]

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within [redacted] after Notice thereof; [redacted]

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Articles 14 or 15, as 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) except as otherwise provided herein (including the delivery of Replacement Energy in accordance with the definition thereof), if at any time, Seller delivers or attempts to deliver to the Delivery Point, for sale under this Agreement, Energy that was not generated by the Facility;

(ii) [redacted]

(iii) the failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10;

(iv) [redacted]

[redacted]

(v) [redacted]

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, if such failure is not remedied within (A) [redacted] after Notice thereof for Seller's failure to replenish the Performance Security amount in accordance with this Agreement and (B) [redacted] after Notice thereof for all other failures by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8;

(vii) [redacted]

(ix) 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

[redacted]

a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

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

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

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

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Contract Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of an Event of Default by Seller after the Commercial Operation Date or an Event of Default by Buyer throughout the Contract Term);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/or

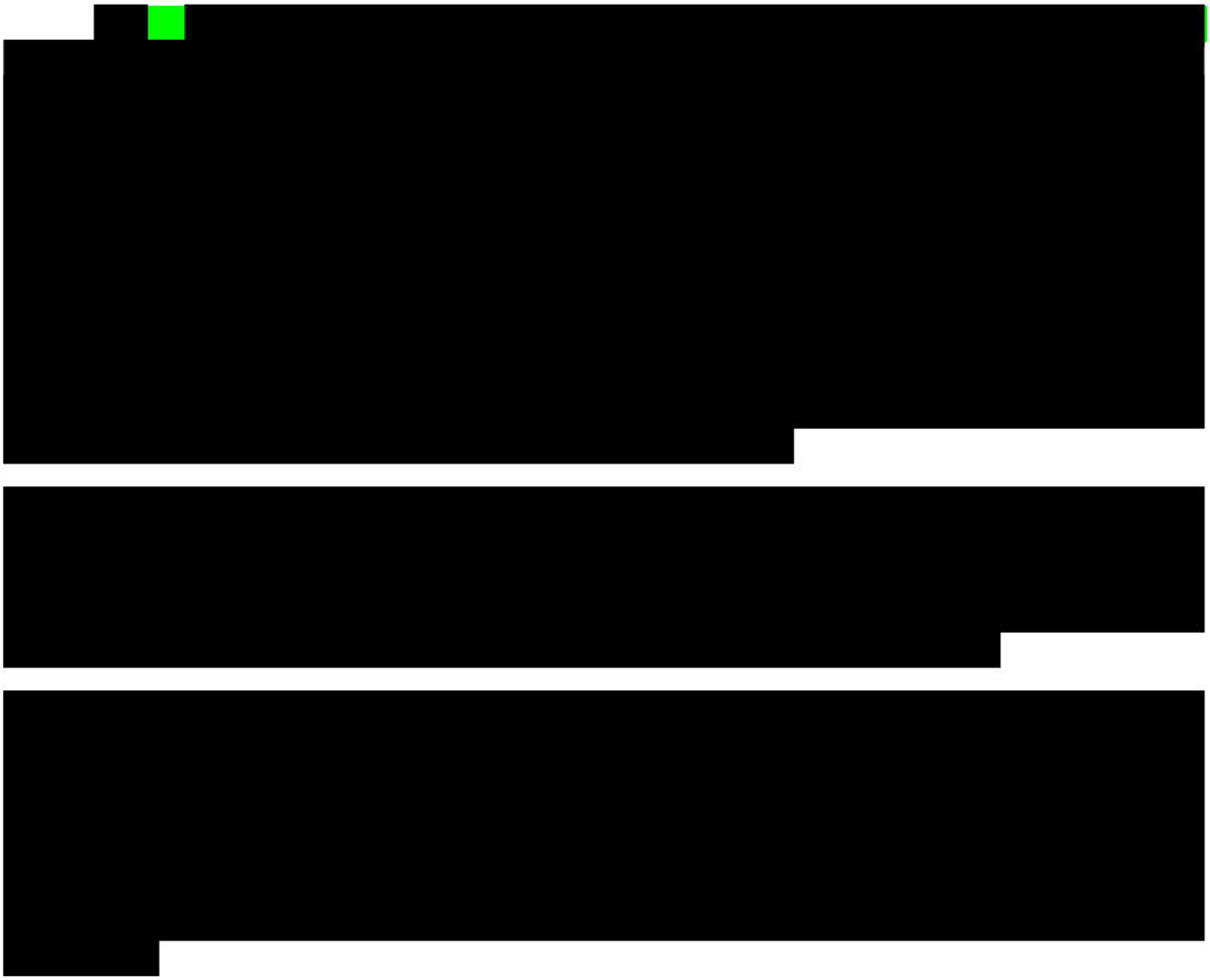
(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto (except with respect to Buyer's rights and remedies pursuant to Section 11.6 subsequent to a Terminated Transaction in which Buyer is the Non-Defaulting Party).

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

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.



11.7 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation**. Any Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY OBLIGATION UNDER ARTICLE 17, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT D, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON

REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.



ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility will be located in the State of New Mexico.

(f) All Energy and associated Green Attributes to be sold and delivered to Buyer hereunder, qualify as PCC1.

(g) The sole point of interconnection between the Facility and the Transmission System is through the Facility's interconnection to the SunZia Transmission Line.

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 (i) suit, (ii) jurisdiction of court, (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Prohibition Against Forced Labor**. Seller represents and warrants that it has not and will not knowingly utilize 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**").

[redacted]

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to Section 15.1, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

[redacted]

14.3 **Permitted Assignment**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, provided, that in each of the foregoing situation [redacted] no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; provided, however, that all third-party costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce its benefits or increase its risks or burdens under this Agreement; provided, however, that providing Lenders with

customary extended cure periods shall not be deemed (i) a modification of this Agreement or (ii) to reduce the benefits or to increase the risks or burdens of the non-granting Party under this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; provided that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Sections 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder; provided, however, that in no event shall a Lender cure period for a breach of Section 11.1(a)(i) extend beyond the cure period set forth in Section 11.1(a)(i). The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law**. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **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.

[redacted]

16.4 **Venue**. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties' agreement, then in the courts of the State of California, in either case sitting in County of San Mateo, California.

ARTICLE 17
INDEMNIFICATION

17.1 **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 third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 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.

17.2 **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 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18
INSURANCE

18.1 **Insurance**.

(a) General. Seller shall comply at all times during the Contract Term with the requirements of Exhibit J.

(b) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same types of insurance coverages with limits customary and prudent for the scope of work, including but not limited to: commercial general liability, workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law, and business auto insurance for bodily injury and property damage. 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 18.1(b).

(c) Evidence of Insurance. Within ten (10) days after execution of this Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Seller shall provide Buyer at least forty-five (45) days prior Notice in the event of any material modification, cancellation or termination of coverage; provided that the Notice period shall be no less than ten (10) days in the event of cancellation due to non-payment of premium. 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(d) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, 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 [redacted]

ARTICLE 19
CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or

[redacted]

otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. **Notwithstanding the foregoing, Seller acknowledges that Buyer was required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. In consultation with Seller, Buyer redacted certain terms of this Agreement as part of such public disclosure.** Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written Notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

19.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Representatives**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to [redacted] agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions materially similar to those in this Article 19.

19.5 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a Credit Rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

19.6 **Public Statements**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 20
MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **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).

20.5 **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.

20.6 **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 the FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

20.7 **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.

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format and the other Party so requests, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **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.

20.11 **Change in Electric Market Design**.

(a) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or

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



EXHIBIT A

DESCRIPTION OF THE FACILITY

The Facility description provided herein reflects Seller's expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer prior to the Construction Start Date, modify the Site Name and Site Location within the APNs set forth below. Except as otherwise provided in this Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer's prior written consent.

Facility Name: SunZia Wind North and SunZia Wind South

Site Map:[17]



[redacted]

Site includes all or some of the following APNs (as of the Effective Date and to be finalized as of the Commercial Operation Date):

Site Location: Lincoln, Torrance and San Miguel Counties, New Mexico

Technology: Wind turbines

Generating Capacity:[18]

Project	Generating Capacity (MW)*	Guaranteed Capacity (MW)
Facility	[3,515]	220
SunZia Wind North	[]	[]
SunZia Wind South	[]	[]

*As of the Effective Date, the "Generating Capacity" listed above is the planned generating capacity for the Facility and each sub-project; the capacities for each will be updated pro rata when the final Installed Capacity is determined pursuant to Exhibit B, and the portion of the Guaranteed Capacity associated with each sub-project will be updated proportionally.

Guaranteed Capacity: 220 MW

Delivery Point: (i) Palo Verde (CAISO scheduling point-intertie combination at PALOVRDE_ASR-APND and PVWEST), or an Alternative Delivery Point as mutually agreed by the Parties

Participating Transmission Owner: SunZia Transmission, LLC

[redacted]

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. [redacted] Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

   b. [redacted]

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.4 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved.

   a. Subject to the terms of this Exhibit B, Seller shall cause Commercial Operation for the Facility to occur by September 30, 2026, as such date may be extended by the Development Cure Period (defined below) (the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least [redacted] days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until [redacted] On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month, and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that prior to the [redacted] Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's delay in achieving Commercial Operation on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii)(B) and to exercise Buyer's remedies for default pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**.

a. [redacted]

[redacted]

b. If the Facility has not achieved Commercial Operation by [redacted], Buyer may elect to terminate this Agreement. Such election by Buyer will be pursuant to Sections 11.1(b)(ii)(B) and 11.2.

c. [redacted]

4. **Extension of the Guaranteed Dates**. The [redacted] shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

a. a Force Majeure Event occurs;

b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date;

c. [redacted]

[redacted]

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed [redacted] for any reason. No extension shall be given to the extent that (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide Notice to Buyer as provided in the following sentence, or (iii) Seller failed to provide requested documentation as required in the last sentence of this paragraph. Seller shall provide prompt Notice of a delay, but in no case more than thirty (30) days after Seller becomes aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide

written Notice within seven (7) Business Days of Seller becoming aware of such delay. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delay described above did not result from Seller's actions or failure to take commercially reasonable actions. [redacted]

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity is at least [redacted] of the Guaranteed Capacity, but less than the Guaranteed Capacity, Seller shall have [redacted] days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to at least the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G hereto specifying the new Installed Capacity. In the event that the Installed Capacity is still less than the Guaranteed Capacity as of such date, [redacted] the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

7. [redacted]

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:

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

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

SELLER:

Attn:

Phone:

EXHIBIT D

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 ("**Guaranteed Energy Production Damages**") shall be due from Seller to Buyer, calculated as follows:

[redacted]

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall, subject to Section 4.7, 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, subject to Seller's delivery of Retrospective Replacement Product pursuant to Section 4.7.

Additional Definitions:

"**Adjusted Energy Production**" shall mean the sum of the following: Metered Energy + [redacted] + Deemed Delivered Energy + Lost Output – Excess MWh; [redacted].

"**Lost Output**" means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

"**Energy Shortfall Amount**" means the amount of MWh resulting from the calculation of A – B.

EXHIBIT E

PROGRESS REPORTING FORM

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

Each Progress Report must include the following items:

1. Executive summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any 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 could potentially 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 agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Any other documentation reasonably requested by Buyer.

EXHIBIT F[19]

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE



EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____
[NAME], P.E.
[TITLE]
New Mexico License No. [#

EXHIBIT G

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [Licensed Professional Engineer] ("**Engineer**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between SUNZIA WIND POWERCO LLC ("**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 this Agreement.

As of the date set forth below, [___] wind turbines with a collective nameplate capacity of [__] ("**Installed Capacity**") have been installed ([__] MW at SunZia Wind North and [__] MW at SunZia Wind South), and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the point of interconnection specified in the Interconnection Agreement.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT H[20]

FORM OF CONSTRUCTION START DATE CERTIFICATE



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

SUNZIA WIND POWERCO LLC

By:_____
Its:_____

Date:_____

_____



EXHIBIT I[21]

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

[redacted]

[redacted]

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

Exhibit I - 2

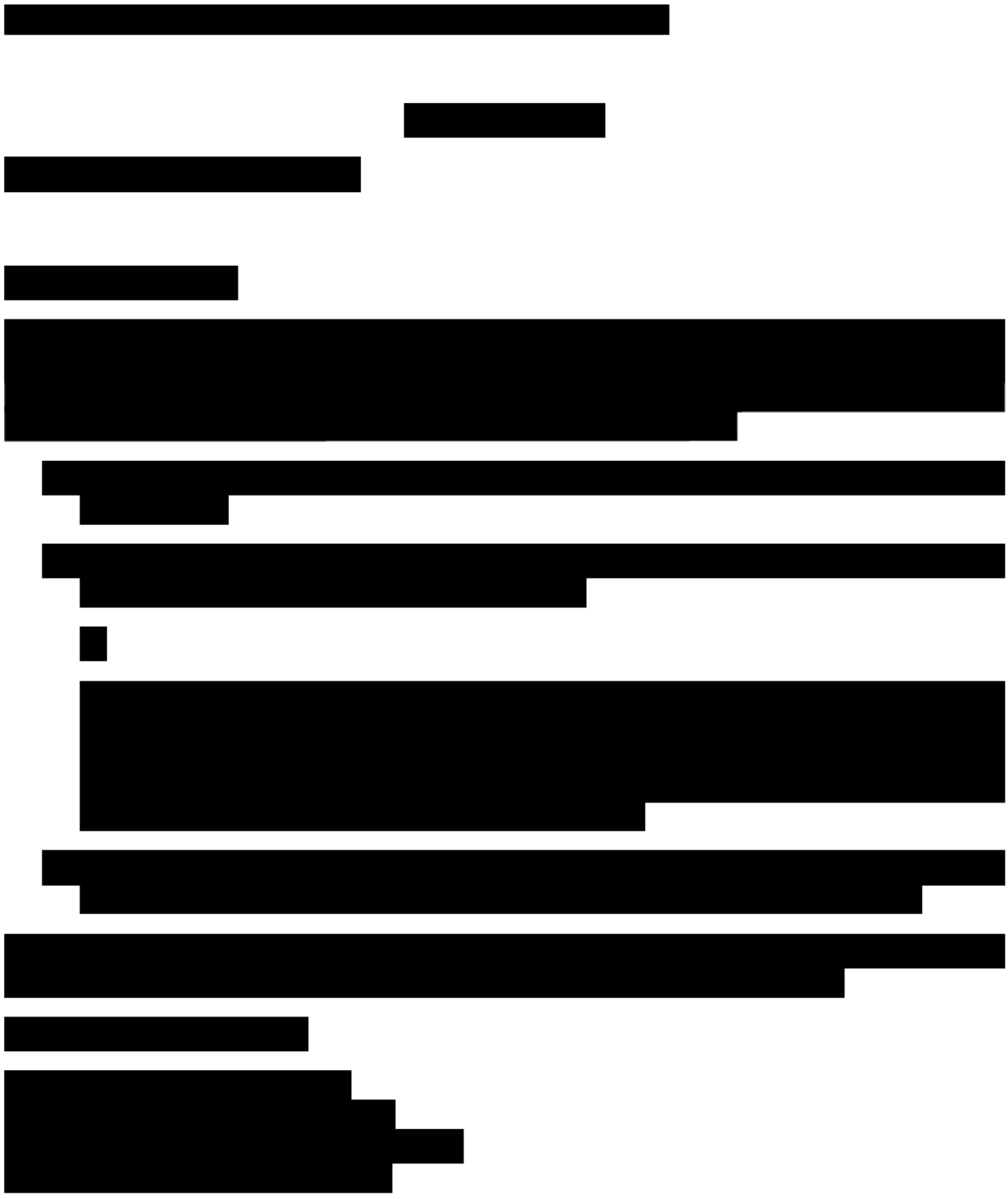


Exhibit I - 3

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Seller, the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of this Agreement.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 45 days' notice in case of cancellation or non-renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and all relevant Endorsements shall be filed with Buyer within (5) working days of execution of the contract and/or prior to commencement of any work performed.

If requested by Buyer in writing, Seller shall provide a copy of any or all relevant policies.

Acceptance of the certificates or endorsements by Buyer shall not constitute a waiver of Seller's obligations hereunder.

If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this Agreement or secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Coverage Forms & Limits

Seller's Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury.

Coverage shall be on an occurrence form with policy limits of:

- [redacted] Each Occurrence Bodily Injury & Property Damage
- [redacted] Personal & Advertising Injury
- [redacted] General Aggregate
- [redacted] Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of [redacted] per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of:

- Workers Compensation: Statutory
- Employers Liability
  - [redacted] Bodily Injury by Accident – Each Accident
  - [redacted] Bodily Injury by Disease – Total Limit
  - [redacted] Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits of:

- [redacted] Each Occurrence
- [redacted] Personal & Advertising Injury
- [redacted] Aggregate (where applicable, following the terms of the underlying)

Sudden and accidental Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or

incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage, clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, and transportation of pollutants on and off the project site. Coverage shall also extend to pollution conditions arising out of the Seller's operations for sudden and accidental release arising from Seller's operations including operations of any of its Seller's or consultants.

Such insurance shall be in an amount of not less than [redacted] per claim or occurrence and [redacted] annual aggregate. This limit may be met with in combination with the Umbrella or Excess Liability Insurance.

Additional Insured / Primary-Noncontributory / Waiver of Subrogation Requirements To the fullest extent of coverage allowed under applicable law, Buyer shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation, arising out of all operations performed by or for the Seller under this Agreement. Buyer shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

Seller's insurance shall be Primary as respects to Buyer and Seller, and any other insurance maintained by Buyer and Seller shall be excess and not contributing insurance with Seller's insurance.

In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the Contract Term.

Buyer reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation in favor of the Buyer for all lines of coverage.

Additional Requirements

Seller is solely responsible for loss or damage to its personal property.

EXHIBIT K[22]

FORM OF REPLACEMENT RA NOTICE

[redacted]

[redacted]

[redacted]	
[redacted]	
[redacted]	
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[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]				
[redacted]				
[redacted]				
[redacted]				
[redacted]				

[redacted]

[SELLER]

By:_____

Its:_____

Date:_____



Exhibit K - 2

EXHIBIT L - 1[23]

Annual Energy Forecast

[redacted]

[redacted]			

[redacted]

Exhibit L1 - 1

EXHIBIT L - 2[24]

Monthly Expected Available Capacity

[redacted]

[redacted]

[redacted]

[redacted]																							
[redacted]																							
[redacted]																							
[redacted]																							
[redacted]																							

[redacted]

Exhibit L2 - 1

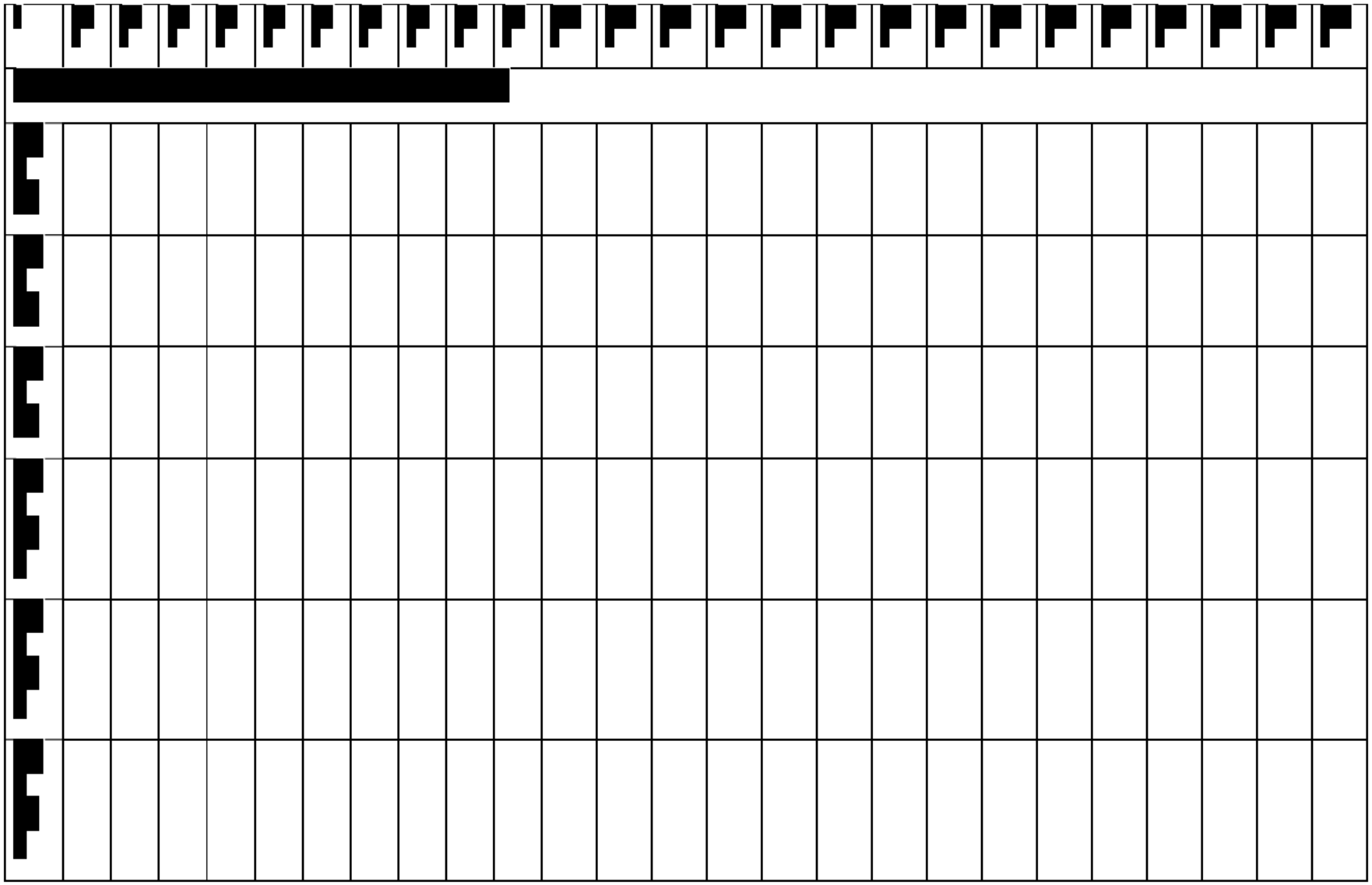


Exhibit L2 - 2

[redacted]

Exhibit L2 - 3

EXHIBIT L - 3[25]

Monthly Expected Delivered Energy

[redacted]

[redacted]

[redacted]

[redacted]																								
[redacted]																								
[redacted]																								
[redacted]																								
[redacted]																								

[redacted]

Exhibit L3 - 1

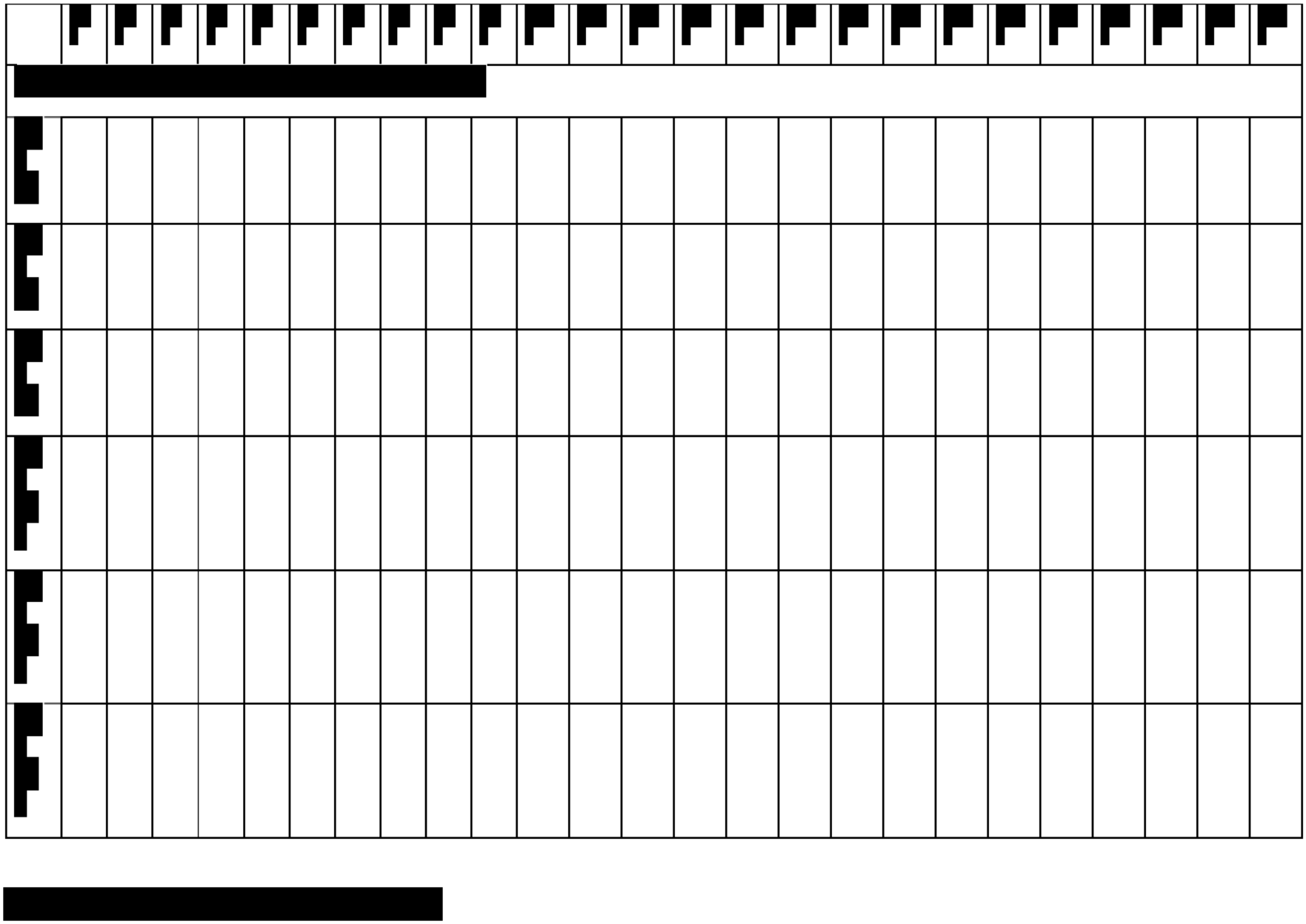


Exhibit L3 - 2

EXHIBIT M
OPERATING RESTRICTIONS

Operating Restrictions of the Facility for Market Curtailment Periods are as follows:

Interconnection Capacity (Maximum Injection Amount): 3,000 MW

Minimum operating capacity: 0.0 MW

Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A

Ramp Rate: To be provided by Seller upon Notice to Buyer prior to Commercial Operation; provided, in no event shall it take more than ten (10) minutes for the Facility to ramp up from zero (0) MW to Pmax or ramp down from Pmax to zero (0) MW.

Minimum Down Time: N/A

[redacted]

[redacted]	[redacted]
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]

Exhibit N

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 15, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Roy Xu, Director of Power Resources
Mehdi Shahriari, Manager of Planning and Analytics

SUBJECT: Adopt Staff's Recommendation on Delivery of 100% Renewable Energy Annually by 2025 and on a 99% Time-Coincident Basis by 2027

RECOMMENDATION:
Based on the updated results of the 24/7 analysis presented by staff, adopt staff's recommendation to deliver 100% renewable energy annually by 2025 and on a 99% time-coincident basis by 2027.

BACKGROUND:
In 2017 Peninsula Clean Energy ("PCE") set an ambitious goal to deliver 100% time-coincident renewable energy to its customers by 2025, which means delivering renewable energy that matches customers' demand each and every hour of the day. In the ensuing years, staff developed and leveraged a new 24/7 clean energy procurement modeling tool that has been helping Peninsula Clean Energy understand the best path to achieving this goal.

In December 2021, Peninsula Clean Energy published its White Paper Part I on this topic, explaining PCE's vision for its 24/7 renewable energy goal. Building on the work in the first white paper, staff presented the results of extensive portfolio modeling to the Board of Directors at the Board Retreat in September 2022. In that presentation, staff explained how Peninsula Clean Energy can achieve time-coincident renewable energy targets and how different time-coincident targets would impact Peninsula Clean Energy's cost of energy. Further, staff presented how time-coincident renewable energy procurement could provide benefits to society by reducing greenhouse gas emissions and improving grid performance.

In November 2022, the Board of Directors adopted staff's recommendation on delivering 100% renewable energy annually on a 99% time-coincident basis by 2025. In January 2023, Peninsula Clean Energy published its White Paper Part II that describes how PCE will achieve its 24/7 goal. At that time, PCE also published the Modeling Around-The-Clock

Hourly Energy (MATCH) modeling tool, a free, open-source modeling tool that can be used by other communities to find the optimal portfolio to meet similar 24/7 goals for their community.

Staff has continued to update its modeling and analysis with the most recent power resource availability and market conditions. Delays in resource development due to global supply chain and financial issues, labor shortages, and interconnection delays have resulted in fewer resources available to Peninsula Clean Energy by 2025 than originally planned. Given these new conditions, staff has re-evaluated the optimal approach to delivering 24/7 renewable energy to our customers.

SUMMARY:

Peninsula Clean Energy Staff leveraged the MATCH modeling tool to evaluate the optimal implementation of Peninsula Clean Energy's 24/7 goal given updated market conditions and resource availability. Due to delays in resource development, only a limited pool of resources is available to begin delivering time-coincident renewable energy by 2025 and these resources are not a good fit for Peninsula Clean Energy's portfolio because of their generation profiles. Contracting with such resources will increase over-procurement, and lead to higher long-term cost and risk to Peninsula Clean Energy. In contrast, there is a more diverse set of potential resources available for time-coincident renewable energy delivery in 2027 and some are a much better fit for Peninsula Clean Energy's portfolio. Contracting with these resources would decrease over-procurement and reduce the long-term cost and risk. As such, staff recommends updating PCE's 99% time-coincident goal from 2025 to 2027 in order to incorporate the more optimal and cost-effective resources in Peninsula Clean Energy's portfolio. Staff further recommends keeping the goal of delivering 100% renewable energy annually by 2025. Staff will continue to monitor and evaluate the feasibility of achieving the 24/7 goal by 2027.

DISCUSSION:

Staff has updated its modeling of the 24/7 renewable goal using the most recent market information and resources availability. Due to global supply chain and financial issues, as well as labor shortages and interconnection delays, there are significant delays in the development of renewable resources. There are limited resources available in 2025, with a wider availability of resources of different technologies expected to be available in 2027 and beyond. The resources available in 2027 tend to be a better fit for Peninsula Clean Energy's portfolio. For example, several important wind resources are expected to be online in 2027. Wind resources are an excellent fit for Peninsula Clean Energy, as they complement solar generation by providing overnight and winter generation.

In addition, staff has been actively pursuing short-term contracts with existing renewable resources in an effort to meet the 24/7 goal by 2025, but has had limited success due to unavailability of such products in the current high-priced market. As a result, staff expects that Peninsula Clean Energy will need to rely more on long-term contracts with new resources to meet its 24/7 time-coincident goal. However, if Peninsula Clean Energy chooses to enter long-term contracts with sub-optimal resources for delivery in 2025 to try

to meet the 99% time-coincident goal by 2025, then Peninsula Clean Energy won't have room in its portfolio for more optimal resources becoming available in 2027.

Staff has compared the portfolio structures between meeting the 99% goal in 2025 versus meeting it in 2027. Staff notes that the significant amount of capacity required from less-desirable resources to meet the 99% time-coincident goal by 2025 translates directly into high volumes of over-procurement, which Peninsula Clean Energy would try to sell, but the ability to sell at fair prices is not guaranteed. The high amount of capacity and the over-procurement could lead to increased costs and increased portfolio risk that would extend into the next ten to fifteen years. On the other hand, by targeting 24/7 in 2027, staff would have more flexibility to contract with resources having favorable profiles and attributes that are a better fit for Peninsula Clean Energy's portfolio. In the long run, shifting the target date by two years will decrease over-procurement and reduce the total cost and risk to PCE.

The staff's analysis indicates that the recommended strategy to achieve 24/7 by 2027 is the optimal approach to balance the costs and benefits to Peninsula Clean Energy's customers. At the same time, PCE will maintain the goal of delivering 100% renewable energy annually by 2025. Staff notes that it will continue to monitor and evaluate the opportunity of achieving the 99% time-coincident goal by 2027, and promptly communicate any changes to the Board of Directors.

FISCAL IMPACT:

Updating the implementation of a 99% time-coincident renewable energy procurement target to 2027 will reduce the expected cost and risk of Peninsula Clean Energy's future portfolio, relative to a 2025 target. There is no immediate impact to the current 2023-2024 FY budget.

STRATEGIC PLAN:

The updated 24/7 Renewable Strategy is in support of the following objectives in Peninsula Clean Energy's strategic plan:

- Organizational Priority 1: "By 2025, deliver 100% renewable energy each and every hour of day." If the Board adopts the current recommendation, staff suggests updating this Priority to "By 2025, deliver 100% renewable energy annually, and by 2027, deliver renewable energy each and every hour of the day."
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION ADOPTING STAFF'S RECOMMENDTION ON DELIVERY OF 100% RENEWABLE ENERGY ANNUALLY BY 2025 AND ON A 99% TIME-COINCIDENT BASIS BY 2027

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

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

WHEREAS, in 2017, Peninsula Clean Energy set an ambitious goal to deliver 100% time-coincident renewable energy to its customers by 2025; and

WHEREAS, in 2022 the Peninsula Clean Energy Board of Directors adopted a resolution to achieve 100% renewable energy annually and meet a 99% time-coincident target by 2025; and

WHEREAS, staff modeling and analysis of current available resources and current market conditions indicate that meeting a 99% time-coincident renewable target by 2025 is cost prohibitive and would lead to non-optimal long-term portfolio structure; and

WHEREAS, staff modeling and analysis indicate that meeting a 99% time-coincident renewable target by 2027 is potentially achievable in a way that reduces costs and optimizes portfolio structure,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board adopts the staff's Recommendation of delivery of 100% renewable energy annually by 2025 and on a 99% time-coincident basis by 2027.

* * * * * *

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: June 15, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: David Silberman, General Counsel
Jennifer Stalzer, Assistant General Counsel

SUBJECT: Approval of Appointment of Shawn E. Marshall as Chief Executive Officer (CEO) and an Agreement for her Service as CEO for the Term of July 1, 2023 to June 30, 2026 in an Amount Not-to-Exceed $400,000 annually

RECOMMENDATION

The Board's Ad Hoc Committee (consisting of Dave Pine, Marty Medina, Donna Colson, and Rick DeGolia) recommends that the Board approve an Agreement with Shawn E. Marshall in the position of Chief Executive Officer for Peninsula Clean Energy. The Agreement commences on July 1, 2023 and concludes on June 30, 2026 with the possibility of an extension; and (2) provides for an annual base salary of $375,000 effective July 1, 2023 with the possibility of an annual bonus of up to $25,000, subject to the PCEA Board's sole discretion.

BACKGROUND/CURRENT STATUS

Upon the retirement of Peninsula Clean Energy Authority's founding Chief Executive Officer, Janis C. Pepper, on June 30, 2023, the Board's Ad Hoc Committee recommends that Shawn E. Marshall be appointed as the Chief Executive Officer of the company effective July 1, 2023. The Board's Ad Hoc Committee led and managed a comprehensive recruitment for the position and received a number of qualified candidates. Ad Hoc Committee members reviewed applicants' resumes and held interviews in aid of finding the most qualified candidate for the position. Based on a thorough review of qualifications, the Ad Hoc Committee determined that Ms. Marshall is the most qualified candidate given her background, experience, knowledge, and understanding of the CCA landscape. The committee recommends her appointment for an initial three (3) year term.

The Ad Hoc Committee, with the assistance of counsel, conducted a salary analysis in comparison with other nearby and comparable Community Choice Aggregators for the position and based on this information gathering, drafted the attached Agreement inclusive

of comprehensive compensation (including salary, retirement contributions, benefits, and time off). The Agreement also provides for an annual Performance Review to occur on or around June 30th of each year. Subsequent to the completion of the annual performance review, the Board will have the option of awarding up to a $25,000 bonus to Ms. Marshall. In conclusion and based on the above-described reviews and analysis, the Ad Hoc Committee recommends approval of the attached Employment Agreement and welcomes Shawn E. Marshall as Chief Executive Officer of PCEA.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION APPROVING APPOINTMENT OF SHAWN E. MARSHALL AS CHIEF EXECUTIVE OFFICER AND AN AGREEMENT FOR HER SERVICE AS CEO FOR THE TERM OF JULY 1, 2023 TO JUNE 30, 2026 IN AN AMOUNT NOT TO EXCEED $400,000 ANNUALLY

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

WHEREAS, PCEA was formed on February 29, 2016; and

WHEREAS, Janis Pepper has been the Chief Executive Officer of PCEA since May 27, 2016; and

WHEREAS, Janis Pepper is retiring from the position effective June 30, 2023; and

WHEREAS, the PCEA Board of Directors initiated a recruitment for the position and as such, an Ad Hoc Committee of PCEA's Board of Directors consisting of Dave Pine, Marty Medina, Donna Colson, and Rick DeGolia assisted with the Chief Executive Officer recruitment and recommendation process; and

WHEREAS, the Board's Ad Hoc Committee led and managed a comprehensive recruitment for the position and received a number of qualified applicants; and

WHEREAS, Shawn E. Marshall, who has served ably as Chief Operating Officer of PCEA, was one of those applicants; and

WHEREAS, at the conclusion of the recruitment process, the Ad Hoc Committee now recommends that the PCEA Board select Shawn E. Marshall as PCEA's Chief Executive Officer and sign an agreement to that effect with Ms. Marshall;

WHEREAS, the term of the Agreement shall be from July 1, 2023 to June 30, 2026 in an amount not to exceed $400,000 annually;

WHEREAS, this amount is inclusive of $25,000 per contract year for an optional annual bonus, the dispensation of which and the amount of which shall be determined on or about June 30 of each contract year and is dispersed at the sole discretion of the Board; and

WHEREAS, this Board has been presented with a form of such agreement and has examined and approved as to both form and content and desires to enter into the same.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Chair of Peninsula Clean Energy be, and hereby is authorized and directed to execute said Agreement Between the Peninsula Clean Energy Authority and Shawn E. Marshall for Service as Chief Executive Officer for and on behalf of Peninsula Clean Energy, and the Clerk of the Board may attest the Chair's signature thereto.

* * * * * *

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND SHAWN E. MARSHALL FOR SERVICE AS CHIEF EXECUTIVE OFFICER

THIS AGREEMENT is entered into this 1st day of July, 2023, between the PENINSULA CLEAN ENERGY AUTHORITY ("PCEA"), a joint powers agency established by the County of San Mateo and Cities within the County, and SHAWN E. MARSHALL ("CEO").

W I T N E S S E T H

WHEREAS, SHAWN E. MARSHALL has served ably as Chief Operating Officer of PCEA;

WHEREAS, PCEA conducted a recruitment and selected SHAWN E. MARSHALL as the CEO of PCEA;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions as hereinafter set forth, the parties agree as follows:

1. SHAWN E. MARSHALL is hereby employed as CEO of PCEA pursuant to this Agreement. This Agreement, and CEO's term of employment, commences on July 1, 2023, and ends on June 30, 2026. The specification of a term indicates only the maximum length of this Agreement and is not a guarantee of employment for any period of time. CEO is an at-will employee and shall serve at the pleasure of the PCEA Board of Directors ("PCEA Board"). PCEA may terminate this Agreement, without cause, at any time for any reason effective immediately upon written notice. CEO may terminate this agreement, without cause, at any time for any reason upon 60 days written notice.

2. CEO shall be responsible for the day-to-day administration of PCEA under the direction of PCEA Board. CEO shall seek advice and assistance from the Executive Committee and any other committee constituted by PCEA for that purpose. Duties to be performed by CEO are set forth in the job description attached as Exhibit A to this Agreement. CEO shall devote her full-time efforts to the performance of the duties of CEO of the PCEA.

3. Beginning July 1, 2023, CEO shall receive an annual salary of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($375,000.00) in 24 bimonthly installments of $15,625.00. This salary will remain in effect until at least June 30, 2026.

4. Any further salary increase will be made in conjunction with CEO's annual performance reviews, which will generally take place on or about June 30th of each succeeding year. The determination of whether any salary adjustments are merited and the amount of the adjustments are within the sole discretion of the PCEA Board, whose decision shall be final. Further, CEO shall be eligible for an annual bonus of up to TWENTY-FIVE THOUSAND DOLLARS ($25,000) to the extent that the Executive Committee of the PCEA Board (or an ad hoc committee appointed by the Executive Committee) determines that the CEO has met or exceeded the goals and objectives established by Executive Committee (or an ad hoc committee appointed by the Executive Committee). The determination of whether any bonus is merited and the amount are within the sole discretion of the PCEA Executive Committee (or an ad hoc committee appointed by the Executive Committee), whose decision shall be final.

5. PCEA shall provide CEO with a Defined Contribution Plan or Plans. The Plan(s) will provide for a matching contribution from PCEA in the same manner and amount as that currently provided to other PCEA staff. The matching contribution from PCEA will vest in

accordance with the vesting terms established for other PCEA employees set forth in the Plan(s) but in no event will the vesting period exceed four years.

6. CEO shall accrue paid leave and such paid leave shall be accrued and capped in a manner consistent with that of other PCEA management employees.

7. CEO shall be provided with paid holidays in conformance with the paid holidays established for other PCEA employees.

8. CEO is eligible for health, vision, dental and other benefits in the same manner and cost as other PCEA employees.

9. During the employment term PCEA shall reimburse CEO for budgeted and reasonable out-of-pocket expenses incurred in connection with PCEA's business, including reasonable expenses for mileage, travel, conferences, and membership dues in professional organizations that are appropriate to PCEA's goals, as approved by the Chair of the Board.

10. PCEA shall pay CEO for all services through the effective date of termination. CEO shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

a. If PCEA terminates this Agreement (thereby terminating CEO's employment) without cause, PCEA shall pay CEO a lump sum severance benefit equal to four (4) months of her then applicable base salary thereafter.

b. If PCEA terminates this Agreement (thereby terminating CEO's employment) with cause, CEO shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

(1) A judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices

Commission involving any misconduct in the course and scope of duties, including but not limited to: intentional tort or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of CEO's duties under this Agreement and involving a willful or intentional violation of law or any crime of moral turpitude;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failures to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by CEO that materially and substantially harms PCEA's interests, materially and substantially impedes or disrupts the performance of PCEA, or that is detrimental to employee safety or public safety.

c. If CEO terminates this Agreement (thereby terminating CEO's employment), CEO shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that CEO may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 – 53264, or other applicable law. Further, in the event CEO is convicted of a crime involving an abuse of office or position, CEO

shall reimburse the PCEA for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

11. This Agreement represents the entire agreement between the parties with respect to the subject matter addressed herein, and any previous agreements between the parties, whether written or oral, with respect to the subject matter of this agreement are of no further force and effect. All subsequent modifications of this agreement shall not be effective unless set forth in writing and executed by CEO and by Resolution of PCEA Board.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

Dated_____ PENINSULA CLEAN ENERGY AUTHORITY

By_____
Rick DeGolia
Chair, PCEA Board of Directors

ATTEST:

_____
General Counsel

Dated_____ By_____
Shawn E. Marshall

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 2, 2023
COMMITTEE MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Jeremy Waen, Director of Regulatory Policy
Marc Hershman, Director of Government Affairs

SUBJECT: Regionalization Study Session

BACKGROUND AND DISCUSSION:

The California Legislature is considering legislation that would enable the State's grid operator, the California Independent System Operator (CAISO), to expand service to other states within the Western Electricity Coordinating Council (WECC). This is a complex issue that has previously been before the legislature, with multiple stakeholders and several policy and operational implications to consider.

Staff will present an overview of the issue and its current status.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 9, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwen Rose, Director of Marketing &
Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Account Services

BACKGROUND

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

DISCUSSION

The following is an update of activities that are currently underway. Please refer to the "Strategic Plan" section below for further information/explanation as to how these activities support Peninsula Clean Energy's strategic plan objectives.

Zero Percent Loan Program and Appliance Rebates
These programs are being promoted in our Energy Programs Bulletin, which is emailed every other month to about 200,000 residential customers, and in paid search. In the last 30 days, 676 users visited the Zero Percent Loan webpage, 1,298 visited the heat pump water heater program page, and 2,517 visited the heat pump heating and cooling program page.

Electrification Messaging and Campaign Support of Decarbonization
We are encouraging electrification in email communications and online advertising. In the last 30 days, 2,021 users have visited our all-electric web page. Our search ads for this campaign are currently achieving a click-through rate of 10% at a cost of $1.65 per click.

The campaign supports our organizational priority to contribute to our community reaching a goal of 100% greenhouse gas-free for buildings and transportation by 2035.

Used Electric Vehicle (EV) Campaign
In the past 30 days, 2,818 users visited the main EV page on our web site. A search advertising campaign addressing barriers and benefits of electric vehicles is currently achieving a click-through rate of 4.93% at a cost of $3.11 per click.

Outreach Grants
Some recent and upcoming program highlights include:

- 350.org Bay Area organized building electrification workshops in San Mateo and Pacifica with over 65 attendees at each. Acterra Home Electrification Workshop on 6/8
- Burlingame Senior Center Presentation on 6/26
- Chinese language radio and online ads from Sound of Hope continue to drive significant traffic to Peninsula Clean Energy's programs webpages.
- Outreach grantee organizations will begin organizing focus groups to provide feedback to Peninsula Clean Energy staff on messaging and programs.
- Collaboration with grantees to promote the E-Bikes for Everyone program beings this month. El Concilio and Senior Coastsiders will help customers enroll in person or on the phone.

Schools and Youth Programs
Peninsula Clean Energy is supporting energy education in various ways, including:

- Funding green awareness field trips for junior high and high school students through the San Mateo County Office of Education Career and Technical Education program. The field trips are designed to interest students in careers as electricians and in other related careers that support our program implementation.
- Funding student stipends for the Youth Climate Ambassadors program
- Sponsoring the annual Youth Climate Film Festival
- Sponsoring energy dashboards for school districts to track campus energy usage
- Funding the San Mateo County Office of Education to assist school districts in baseline assessments of gas equipment and electrical upgrade needs to help them develop building electrification plans in the future.

Los Banos Update
We are sad to share that our Los Banos representative will be moving on from Peninsula Clean Energy in order to focus on her family. Kirsten Andrews-Schwind and Marc Hershman will serve as interim representatives at the community and local government levels in Los Banos while we hire for this position. We thank Sandra for her wonderful work leveraging her vast network in Los Banos for a smooth and successful launch in this community.

News & Media

Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage.

ENROLLMENT UPDATE

ECO100 Statistics (since May report)

Total ECO100 accounts at end of May:	6,544
ECO100 accounts added in May:	22
ECO100 accounts dropped in May:	34
Total ECO100 accounts at the end of April:	6,556

Enrollment Statistics

Opt-outs during May 2023 were 150, which is 13 more than the previous month of April 2023 (137). This includes 57 opt outs in our new service territory of Los Banos during the month of April and 94 from San Mateo County during this month. Total participation rate across all of San Mateo County as of the end of May was 97.08%. The participation rate for the City of Los Banos as of the end of May 2023 was 88.47%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities which means they have elected to receive 100% renewable energy for their municipal accounts. As of May 30, 2023, the ECO100 towns and cities include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

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

Active Accounts as of May 30							
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation	ECO100 Count	ECO100 Percent
ATHERTON INC	2411	218	2629	2691	98%	59	2%
BELMONT INC	10731	915	11646	11962	97%	239	2%
BRISBANE INC	1983	500	2483	2546	98%	92	4%
BURLINGAME INC	13383	1946	15329	15677	98%	353	2%
COLMA INC	581	293	874	889	98%	32	4%
DALY CITY INC	30943	1945	32888	34035	97%	115	0%
EAST PALO ALTO INC	7162	434	7596	7968	95%	27	0%
FOSTER CITY INC	13725	855	14580	14886	98%	340	2%
HALF MOON BAY INC	4198	630	4828	4976	97%	116	2%
HILLSBOROUGH INC	3791	145	3936	4036	98%	71	2%
LOS BANOS INC	12304	1268	13572	15341	88%	4	0%
MENLO PARK INC	14215	1712	15927	16200	98%	612	4%
MILLBRAE INC	8808	643	9451	9740	97%	112	1%
PACIFICA INC	13995	854	14849	15413	96%	181	1%
PORTOLA VALLEY INC	1466	132	1598	1696	94%	1507	94%
REDWOOD CITY INC	31569	3268	34837	35650	98%	730	2%
SAN BRUNO INC	14804	1055	15859	16527	96%	94	1%
SAN CARLOS INC	12209	2058	14267	14615	98%	327	2%
SAN MATEO INC	39874	3836	43710	44839	97%	690	2%
SO SAN FRANCISCO INC	21546	3075	24621	25624	96%	125	1%
UNINC SAN MATEO CO	20851	2949	23800	24574	97%	653	3%
WOODSIDE INC	2012	209	2221	2267	98%	61	3%

Table reflects data as of May 30, 2023

STRATEGIC PLAN

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

Item/Project	**Objective A**: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	**Objective B**: Educate and engage stakeholders in order to gather input, inspire action and drive program participation	**Objective C**: Ensure high customer satisfaction and retention
Social Media Policy	KT3 Tell the story of Peninsula Clean Energy through diverse channels		
Zero Percent Loan and Heat Pump Rebates programs		KT6: Promote programs and services, including community energy programs and premium energy services	
Electrification Messaging Project		KT5: Provide inspirational, informative content that spurs action to reduce emissions.	
EV Campaign		KT6 (see above)	
All-Electric Leader Awards		KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events	KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events		

News and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		
ECO100 and Enrollment Statistics			Reports on main objective C

* “KT” refers to Key Tactic

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 9, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

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

FROM: Jeremy Waen, Director of Regulatory Policy
Doug Karpa, Senior Regulatory Analyst
Matthew Rutherford, Senior Regulatory Analyst
Zsuzsanna Klara, Regulatory Compliance Analyst

SUBJECT: Update Regarding Regulatory Policy Activities

SUMMARY

Jeremy continues to direct the team, oversee key proceedings relating to the Power Charge Indifference Adjustment (PCIA) and annual rate adjustments.

Doug has been heavily focused on Resource Adequacy and Integrated Resources Planning at the California Public Utilities Commission's (CPUC). He has also engaged with the California Independent System Operator on issues of Resources Adequacy, Transmission Planning, Interconnection, and Deliverability.

Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, Demand Flexibility, Demand Response, and DAC-Green Tariff matters.

Zsuzsanna worked with the Power Resources and the Programs team on coordinating the filings due in May and April. She is also focused on the future challenges on the Green-e program and coordinating the Meet & Greets with CPUC and CEC Commissioners.

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Regulatory Compliance

In May Zsuzsanna focused on coordinating the annual Meet & Greets with the CPUC and CEC Commissioners and preparing the necessary presentation materials with team members.

Zsuzsanna continued the discussions with other CCAs, PG&E and the SMUD regarding the news that California Air Resources Board (CARB) may run out of allowances for the 2023 Green-e Energy reporting year. The goal is to lobby CARB to allocate more allowances to Voluntary Renewable Energy Program (VREP), and lobby Center for Resource Solutions (CRS) to change the requirements for the Green-e program. She also worked on finalizing a letter to CARB;signatories will be EBCE, CPA, CleanPowerSF, PCE, and probably OCPA. The letter is expected to be sent in the third week of June.

Zsuzsanna coordinated the filings of data requests for the Power Resources team and the Programs to have up-to-date information about the status of the monthly ongoing filings and the May and June due filings. Zsuzsanna worked on a PG&E data request about DAC-GT and CSGT budget for Program Year 2022. Zsuzsanna started to work with the Programs team on managing future compliance obligations regarding the FLEXmarket program.

In May/June the main compliance filings included the following:

- AMI Annual Data Report, due 5/1 (submitted)
- Q1 DAC-GT quarterly report, due 5/1 (submitted)
- Monthly Procurement Status Report (CPUC) – Due 5/11/23 (submitted)
- Q1-2023 QFER Report / CEC 1306B (CEC) – Due 5/15/23 (submitted)
- Power Source Disclosure (CEC) – Due 6/1/23 (submitted)
- Mandatory GHG Emissions Reporting Requirement (CARB) – 6/1/23 (submitted)
- Monthly Procurement Status Report (CPUC) – Due 6/8
- DAC-GT Annual Budget AL needed correction because of previous formula error: the supplemental AL (AL 30-E-A) was submitted on 6/8

Integrated Resource Planning & Resource Adequacy

The CPUC has issued a Proposed Decision, which among other changes, would prohibit CCAs from filing expansion plans for two years after any RA deficiency. This proposed prohibition is already under challenge from CalCCA, and various parties are advocating for a more flexible structure than what is presently contemplated within the Commission's Proposed Decision. This Proposed Decision also includes new requirements for unspecified RA imports, making RA compliance likely to be more challenging in future cycles.

The Commission has recently resumed its IRP-related policymaking efforts starting with further system modeling which may feed into future procurement decisions.

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

California Independent System Operator

The California independent System Operator has implemented three new stakeholder processes that are likely to have critical impacts on Peninsula Clean Energy's operations:

1. **RA:** the CAISO is undertaking a reform of their Resource Adequacy methodologies in light of the CPUC's adoption of the 24 hourly "slice-of-day" methodology (the CAISO RA requirements run in parallel to the CPUC requirements, and so ideally would be harmonized).

2. **Interconnection:** the CAISO is undertaking a comprehensive review of their interconnection study processes. If successful, the reforms may clear up the significant backlog of applications and speed future interconnection studies that are currently a bottleneck for bringing new generation capacity online.

3. **Deliverability**: the CAISO is also undertaking a review of the deliverability methodologies, which determine whether a generator is eligible to provide Resource Adequacy services. If successful, this could increase the amount of available Resource Adequacy capacity to some degree.

The RA stakeholder process may run into 2025, but the other two stakeholder processes are currently scheduled to be completed by the end of 2023.

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

DAC-GT/CSGT Applications for Program Review

Matthew continues to lead PCE's engagement in policy matters related to PCE's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs.

In May 2022, PG&E, SCE, and SDG&E each filed applications for review of the DAC-GT/CSGT programs, as well as the Green Tariff Shared Renewables and Enhanced Community Renewables programs, collectively referred to as the Green Access Programs (GAP). The CPUC consolidated the applications into one proceeding which has also considered the creation of new programs or tariffs that would propose the development of solar facilities. The Parties have completed several rounds of testimony and briefing. A Proposed Decision (PD) is currently anticipated for Quarter 3 2023.

PCE has collaborated on a joint engagement effort with several CCAs who administer their own DAC-GT and CSGT programs. The Joint CCA's primary focuses throughout the proceeding have been to advocate for ways in which the DAC/CSGT programs should to improve upon the efficient delivery of program benefits to participating low-income customers, and to ensure that program administrators will continue to receive cost recovery for the long-term solar PPAs they signed to serve these programs. Many parties' filings have opined that the DAC-GT and CSGT programs should be frozen or discontinued while failing to acknowledge the success of many of the CCAs' programs that have delivered millions of dollars of rate relief to the low-income participants and procured enough new resources to cover roughly 2/3 of their allocated program capacity.

Parties have also submitted proposals to establish a new community renewable energy program consistent with Assembly Bill 2316 (Ward, 2022). The proposal that has received the most attention is the Net Value Billing Tariff propose by the Coalition for Community Solar Access (CCSA). As it follows a tariff structure, CCAs cannot be compelled by the CPUC to offer the tariff. In its essence, the proposal is to stablish a feed-in-tariff which would pay combined solar and storage facilities for the energy they export using a valuation structure that is meant to reflect the actual value of those exports to the load serving entity (e.g. the facility would be paid for energy according to the CAISO day ahead marginal price, theoretically offsetting costs the LSE would have otherwise paid). The IOUs have pointed out many potential issues with the proposal which will either need to be settled in the PD or through subsequent process. One example of the issues is whether these facilities as designed would be behind the meter or in front of meter (IFOM). This raises questions as to whether they would be CPUC or FERC jurisdictional, whether the valuation scheme as proposed would be appropriate for IFOM projects, and whether they would provide the LSE with any Resource Adequacy benefit as claimed by CCSA. The IOUs have also estimated that their billing systems would each require upgrades in excess of $10 million in order to offer the tariff.

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

Building Decarbonization & Transportation Electrification

The Commission's proceedings relating to building and transportation electrification remain quiet as well. As such, staff bandwidth has shifted towards supporting PCE's other programmatic objectives such aiding the implementation of the Disadvantaged Communities (DAC-GT) program and PCE's FLEXmarket program.

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

STAKEHOLDER OUTREACH

Dr. Karpa hosted Peninsula Clean Energy's regular monthly call with environmental justice and environmental advocates and other CCA staff on May 24 to discuss the environmental and justice implications of the proposed Income Graduated Fixed Charge and also on June 14th to discuss ongoing legislative and regulatory issues. (Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence

DATE: June 8, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on Peninsula Clean Energy's Legislative Activities

SACRAMENTO SUMMARY:

The 2023-24 state legislative session policy and budget committees held hearings throughout the months of April and May.

April 28 was the deadline for bills with a fiscal component to be heard in committee in their house of origin. Those bills with a fiscal component were required to pass their respective policy committees and were then referred to the respective fiscal committees in each house. The fiscal committees had until May 19 to hear those bills and report them to the floor of their respective houses.

May 5 was the deadline for bills that are not fiscal in nature to be heard in committee and then reported to the floor in their house of origin. May 12 was the last date on which policy committees met. They can resume hearings on June 5.

June 2 was the last date by which each house could pass a bill introduced in that house.

The state budget must be passed by midnight on June 15.

The leadership of the state Assembly is scheduled to change on July 1. It was announced late last year that Assemblymember Robert Rivas (D-Hollister) would become the Speaker, replacing Speaker Anthony Rendon. It is unclear whether additional changes will also take place. We will monitor closely any information regarding the chairs and composition of the Assembly's key energy and other relevant legislative committees.

The Legislature's summer recess will run from July 14 to August 14.

PENINSULA CLEAN ENERGY SPONSORED LEGISLATION - BROWN ACT BILL

SB 537, introduced by Senator Josh Becker and sponsored by Peninsula Clean Energy, addresses the ability of board members of multijurisdictional bodies, like ours, to attend meetings virtually from remote locations.

SB 537 was heard in the Senate Committee on Governance and Finance on April 19. Peninsula Clean Energy Vice Chair Donna Colson was a lead witness and aided by her strong testimony the bill passed that committee by a vote of 6-2.

We greatly appreciate the many letters of support for SB 537 from local jurisdictions and elected officials. These include Atherton, Brisbane, Burlingame, Colma, Foster City, San Bruno, San Carlos, San Mateo, South San Francisco, Menlo Park Councilmember Betsy Nash, and Hillsborough Councilmember Leslie Ragsdale.

In addition to local support, letters and official support was also lodged by the League of California Cities, CalCCA, Streets for All, Los Angeles County Sanitation Districts, and sister CCAs Sonoma Clean Power and San Diego Community Power.

Opposition to the bill has come from the ACLU, California News Publishers, Cal Aware, California Broadcasters Association, First Amendment Coalition, Howard Jarvis Taxpayers Association, and the Leadership Council for Justice and Accountability.

At the insistence of the Committee on Governance and Finance, several amendments to the bill were made. Of greatest significance, the bill was amended so that virtual participation has been limited to board members who reside more than 40 miles from the venue in which the meeting is being held and the location of the participant must be included in the agenda of the meeting.

SB 537 was then heard by the Senate Committee on the Judiciary on Tuesday, May 2. Peninsula Clean Energy Director Marty Medina provided compelling lead testimony and the Committee voted 9-2 in support of SB 537.

Of note, several other bills that would amend the Brown Act were introduced in this legislative session. Peninsula Clean Energy sent in a letter of support for AB 1379, authored by Assemblymember Diane Papan. However, that bill was pulled from consideration by the author before it was heard in committee.

SB 537 was considered by the full Senate on May 30. It was passed off the floor of the Senate by a vote of 32-8 and is now awaiting assignment to an Assembly committee.

We continue to work with the author and Committee representatives to improve the bill and ensure its passage.

AB 538 (Holden) – LEGISLATION TO REGIONALIZE THE GRID

AB 538 is a renewed effort by Assemblymember Holden to move California away from the California Independent System Operator as the manager of our state's electric grid and in its place have California join a multi-state regional transmission system.

Proponents have argued that a regional system could accelerate California's ability to meet its clean energy goals, ensure the reliability of the grid and enable the system to scale up to meet the needs of the state's customers. It has also been posited that a regional system will be more transparent around energy prices and emissions while saving money.

Opponents theorize that joining a regional transmission system would dilute California's ability to meet those very same needs and diminish our state's voice on critical clean energy issues. Of significant concern is the impact a regional system would have on California utility workers.

AB 538 was heard in the Assembly Committee on Utilities and Energy. It was passed out of the committee on April 26 after the author, Assemblymember Holden, agreed to work on changes to the bill. Before the bill was amended and could come up for a vote in the Assembly Committee on Appropriations, which Mr. Holden chairs, the bill was withdrawn from consideration.

Shortly thereafter Governor Newsom issued a press release indicating his interest in advancing regionalization.

Given these developments, AB 538 could be revisited by the Legislature at any time.

FY 2023-24 State Budget / AB 1373 (E. Garcia)

As noted in previous Legislative Updates, the Governor introduced a budget trailer bill earlier this year that has raised significant issues of concern. In the budget proposal the Governor seeks to broaden the scope of procurement by enabling the Department of Water Resources to act as a central procurement entity. The trailer bill also adds a capacity payment penalty for Resource Adequacy deficiencies. Further it seeks to clarify the California Public Utilities Commission's Integrated Resource Plan authority over CCAs.

Peninsula Clean Energy and CalCCA have met with legislators, their staff members and Administration officials to try and move this from a budget bill, which would short circuit the hearing process, to a policy bill. We were successful in the Assembly and in April AB 1373 (E. Garcia) was introduced.

In meetings with legislative staff, we have expressed our concerns with the substance of AB 1373, and we filed a letter taking the position of "Oppose Unless Amended". Our letter questioned the need for a central procurement entity and highlighted our biggest concerns: interconnection and the transmission system.

Along with the Municipal Utilities, CalCCA provided the lead testimony expressing our concerns with the bill in the Assembly hearing on AB 1373. We also expressed our opposition to the bill's proposal giving the Public Utilities Commission an expanded, ill-defined Integrated Resource Plan jurisdiction over CCA procurement autonomy. And we raised objection to the bill proposal of a capacity penalty payment for Resource Adequacy deficiencies.

AB 1373 passed the Assembly Committee on Utilities and Energy. It then went to the Committee on Appropriations where it passed on May 18. The bill was then sent to the floor of the Assembly where on May 26 it passed by a vote of 57-17 (with 6 members not voting.

We continued to work with local legislators and other stakeholders to refine the bill to address our issues of concern. We are pleased to report that the Assembly adopted many of the amendments CCAs sought and the version of AB 1373 that was passed off the floor of the Assembly on May 26 was significantly improved. As a result, we have drafted a letter withdrawing our opposition and moving to a neutral position on the legislation.

As of this writing the Senate budget bill has not been printed and we have concerns that despite our efforts and those of CaCCA the Senate version of this legislation will contain many of the policy provisions found in the trailer bill proposal introduced by the Governor.

Governor Newsom unveiled his proposed 2023-24 budget on January 10. His revised budget, advanced by the Governor on May 12, and based in part on the receipt of the April tax revenues, shows that an even larger deficit looms.

It is noted that due to the natural disasters in California both the state and federal government have extended the deadline for Californians filing tax returns which could hamper officials from accurately determining the size of revenues available for the next fiscal year. The Legislature must adopt the budget for the next fiscal year in June, which is months before the new tax filing deadline.

(Public Policy Objective B, Key Tactic 1)

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 9, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

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

1. Highlights from Prior Month
2. Building and EV Reach Codes
3. Buildings Programs
    - 3.1. Appliance Rebates and On-Bill Financing
    - 3.2. Low-Income Home Upgrades & Electrification
    - 3.3. Building Pilots
    - 3.4. Refrigerator Recycling
4. Distributed Energy Programs
    - 4.1. Solar and Storage for Public Buildings
    - 4.2. Residential Solar + Battery Backup
    - 4.3. FLEXmarket
    - 4.4. Community Solar, DAC-GT
5. Transportation Programs
    - 5.1. “EV Ready” Charging Incentive
    - 5.2. Used EV Rebate
    - 5.3. EV Ride & Drives/EV Rental Rebate
    - 5.4. E-Bikes for Everyone Rebate
    - 5.5. Municipal Fleets
    - 5.6. Transportation Pilots

DETAIL

1 Highlights from Prior Month

- 32 new smart outlets were installed in a Belmont apartment building, as part of the EV Ready program, the largest multi-family residential install in the program to date.
- The buildings program has crossed over 1,000 electric heat pump water heaters and heat pump space conditioning systems since inception in 2021
- PCE's Residential FLEXmarket opened and is available to aggregators of energy efficiency and building electrification projects to shape customer load to reduce grid costs and GHG emissions.
- The Lyft electrification pilot has delivered over 250 thousand rides and 3.5 million miles

2 Building and EV Reach Codes

Background: In 2018 the Board approved a building "reach code" initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE) and East Bay Community Energy (EBCE). The program includes no-cost technical assistance, model codes and other tools. The tools and model code language are available on the project website (www.BayAreaReachCodes.org).

In addition, in January 2020 the Board approved an extension of the reach code technical assistance plus additional elements – Education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is publicly available at www.AllElectricDesign.org. In December 2020, the Board approved to extend the contract with TRC Engineers include technical assistance for developing policy for existing buildings. In February 2022 the Board extended the initiative for another two years.

Model Code Summary

- New construction building electrification codes require all-electric and include a menu of exceptions for cities to choose from
- New construction EV codes are the same as last cycle for most building types, requiring more access than the state code. Multi-family buildings are required to provide at least one level 2 charging access point for every dwelling unit. 15% must be Level 2 charging stations. 85% can be low-power Level 2 EV ready.
- Existing building model codes provide a full menu of options for cities to choose from, including: end of flow requirements, time-of-replacement mandates, time of sale disclosure requirements, and a requirement to upgrade existing EV-capable circuits to EV-ready by a time-certain deadline.

Status:

- **City Progress**: Most cities with reach codes from the prior cycle have re-adopted or adopted for the first time, including:
    - New construction

        - Adopted: Atherton, Belmont, Brisbane, Burlingame, County of San Mateo, Daly City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, East Palo Alto
        - Continuing reach codes from 2019: Hillsborough
        - In Progress: South San Francisco, Colma
    - Existing buildings
        - Adopted: Portola Valley, City of San Mateo
        - Exploring: San Carlos, Menlo Park, County of San Mateo
- Berkeley 9th circuit ruling – The 9th circuit court of appeals has ruled against Berkeley in a case brought by the California Restaurant Association and funded by Sempra (SoCalGas.) Berkeley's has requested an En Banc hearing from the 9th circuit.The next step after that, for either party, would be an appeal to the Supreme Court.
    - The 9th circuit ruling is specific to the Berkeley code. Most cities adopted a different code based on the state energy code.
    - Our legal staff is available to connect with Cities' attorney, and has already done that for some jurisdictions. Ultimately, it is up to each jurisdiction how they move forward at the moment.
    - Our team is developing alternative code approaches to provide options for cities to continue to support building decarbonization

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

3 Buildings Programs

3.1 Appliance Rebates and Zero Percent Loans

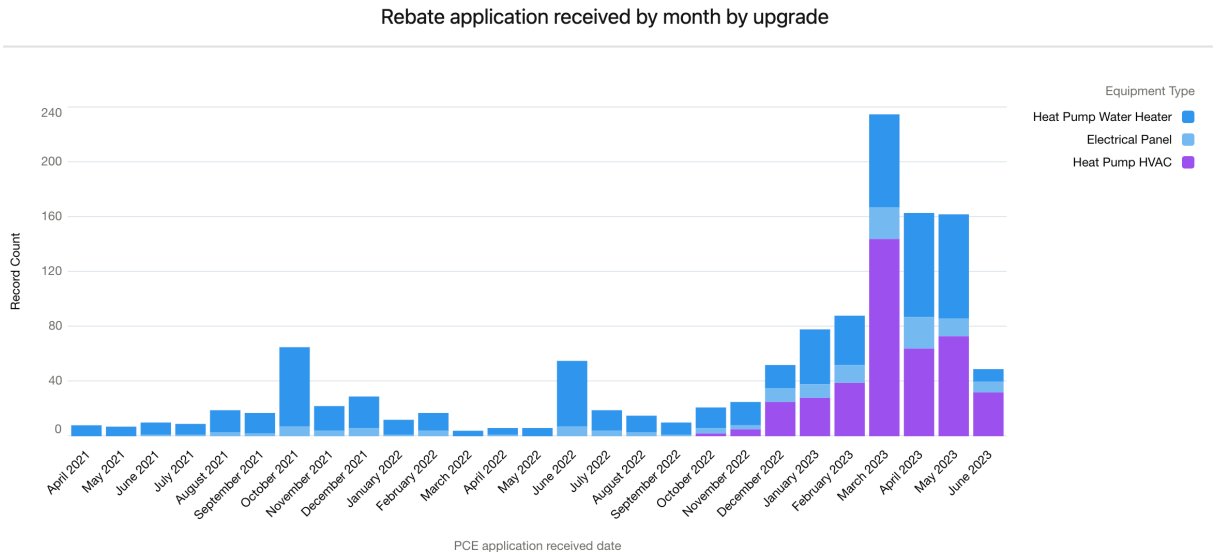
Background: In May 2020, the Board approved a 4-year, $6.1 million for electrifying existing buildings. This included $2.8 million for implementing an appliance rebate program. Peninsula Clean Energy successfully launched the heat pump water heater (HPWH) rebates on January 01, 2021. Peninsula Clean Energy rebates were exclusively offered in partnership with BayREN's Home+ program, which offers additional rebates for HPWHs that are combined with Peninsula Clean Energy's. Additionally, in August 2021, the Board approved an On-Bill Financing program (now referred to as the Zero Percent Loan program) with $1.0 million in loan capital (treated as a balance sheet asset and not part of the annual budget). The program offers qualified residential customers a 0% interest loan up to $10,000 to fund the cost of eligible electrification and complementary electrical and energy efficiency upgrades.

On October 17, 2022, Peninsula Clean Energy launched its Zero Percent Loan program and rolled out modifications and enhancements to the Appliance Rebates Program including increasing its HPWH rebate, launching a new heat pump heating ventilation and air conditioning (HVAC) rebate, adjusting the eligibility criteria for its electrical panel upgrade bonus rebate, and creating a rebate application process for customers not working with BayREN contractors, while still maintaining the integrated application process with the BayREN Home+. These modifications were made to A) bring fuel switching/electrification to at least cost parity with gas replacements, B) backstop the loss of state incentives, and C) support the adoption of existing building reach codes.

Status: The table below summarizes the number of rebates issued as of June 9, 2023.

Upgrade Type	**Count**
HPWH rebates	607
Heat pump HVAC rebates	322
Electrical panel rebates	127
Zero percent loans completed	110 for $987,302
Additional zero percent loans reserved	82 for $797,440

The chart below summarizes the number of applications received by month by upgrade type.



Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

3.2 (Low-Income) Home Upgrade Program

Background: In May 2020, the Board approved $2 million for implementing a turnkey low-income home upgrade program to offer minor home repair, energy efficiency, and electrification measures to income-qualified homeowners at no cost to them. The measures implemented in each home will vary depending on the home's needs but will include at least one electrification measure such as installing a HPWH or replacing a gas stove with an electric induction stove. The Board approved a contract extension for $1.5 million in February 2023 which included more homes for the current service plus 4-6 whole home electrification upgrades.

Status: The program was announced on September 28, 2021. The below table summarizes the program's status as of the end of May.

Stage/category	#s
Leads	4259
Reached	1349
Pre-assessments	624
Enrolled and eligible	233
Installations in progress	19
Fully complete	178

The following table summarizes the number of electrification measures implemented on the fully complete homes.

Measure	Count
Heat pump water heater	71
Induction cooktop/range	44
Electric dryer	42
Central or mini split heat pump (HVAC)	3
Window or wall mounted heat pump (HVAC)	10
Portable heat pump (HVAC)	45

Strategic Plan:

Goal 3 – Community Energy Programs

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

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

3.3 Building Pilots

Background: In May 2020, The Board approved $300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 3-5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status (no updates from last month): The home recruitment process began in late April 2021 and the project received 290 applications. Homes were selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The four pilot homes are located in Daly City, South San Francisco, Redwood City, and Menlo Park. As of September 7, 2022, all four homes have had their system installed. The consulting firm TRC has been contracted to provide independent measurement and verification services for the project and have begun collecting data on the homes installed. The 12-month data collection period ended on 4/23, with draft results expected in the summer, final results in the fall, and project closure by the end of the year.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

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

3.4 Refrigerator Recycling

Background: In April 2019, Peninsula Clean Energy launched a small turnkey refrigerator recycling program with a budget of $75,000 as part of the Community Pilots program. The program administrator, ARCA Recycling, manages orders intake, pick up scheduling, and rebate processing. The objective of the program is to capture high impact greenhouse gas gases from old appliances by facilitating proper recycling of the appliance's refrigerants and foaming agents for insulation.

Peninsula Clean Energy executed an amendment effective March 1, 2023 to add $95,000 to the residential program and remove bulk pickups.

Status: This program is on pause. ARCA is going through an ownership change, and they stopped doing pickups during this transition. Customers can still place orders, but they will not be scheduled until ARCA has resumed appliance pick-ups. They have not provided an estimated timeframe.

Since inception in April 2019, the recycling program has recycled 842 refrigerators and freezers resulting in over 1,600 MTCO2e in greenhouse gas reduction.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

4 Distributed Energy Programs

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and is advancing distributed energy resources to provide resilience, lower decarbonization costs, provide load shaping to support our strategic goal for 24/7 renewables. The projects described below are efforts towards meeting both of these goals.

4.1 Solar and Storage for Public Buildings

Background: The Solar and Storage for Public Buildings is aimed at aggregating local government facilities into a group procurement of solar and optionally storage systems. Peninsula Clean Energy provides no-cost site assessments and preliminary designs as well as manages the procurement process. Participating sites have systems installed as part of power purchase agreements directly with Peninsula Clean Energy. As part of the pilot phase, in October 2020, the Board approved a Solar Site Evaluation Services contract with McCalmont Engineering for Solar site evaluation and designs for County and municipal facilities identified as candidates for solar-only or solar + storage resilience projects. In March 2022, the board approved up to $8 million in capital for system installations to be repaid over 20 years and $600,000 for technical assistance on the second round of the aggregated solar program. Intermountain Electric Company was selected in the competitive solicitation on the basis of its pricing, experience, labor practices, and other metrics. Intermountain is a local union firm with an excellent reputation. At the January, 2023 Board Meeting, the Board of Directors granted authority to the CEO to execute the installation contract and power purchase agreements with participating agencies in the first round.

In December 2022, the CPUC finalized a decision to change rules to net metering, which will reduce the value of solar exported to the grid during the day. Customers can get grandfathered into current net metering rules (“NEM 2.0”) before the rules go into effect (“NEM 3.0”). Interconnection applications were submitted for the first portfolio of systems in October 2022 to secure a grandfathered position under NEM 2.0.

Staff is running the second round of the program. Staff expects to increase the size of the portfolio from round one and help our customers lock-in NEM 2.0 for their projects.

Status
For the first round of the Program, 12 PPAs for 1.27 MWdc have been executed with 10 jurisdictions. w. Intermountain Electric Company is finalizing technical designs and related documentation for all sites. Construction is expected to begin by the end of this calendar year, with all sites being complete by end of Q1, 2024.

A total of 23 agencies expressed interest in the second round of the program, providing staff with 120 facilities to evaluate for their solar potential. Site walks have been executed at all viable facilities with engineering firms NV5 and SepiSolar. 38 interconnection applications for >16 MWdc were submitted by the April 14th deadline to grandfather them into the more favorable NEM 2.0 rules.. Other sites considered were disqualified for technical reasons.

Staff is currently developing the energy contract, construction contract, financial proposal, and procurement documents as part of the second round.

4.2 Residential Solar + Battery Backup

Background: The Residential Solar + Battery Backup offers energy resiliency program in partnership with Sunrun. This program provides energy storage systems paired with solar power to single family customers. Customers who sign up for this program receive an incentive up to $500. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low and electricity prices are high. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

Status (no updates from last month): The program has commenced dispatching customer batteries in the evening to help reduce Peninsula Clean Energy's net peak. Sunrun continues to enroll new customers throughout 2023 and, as they enroll more customers, available capacity from their distributed battery storage fleet continues to increase as well. Sunrun and staff included distributed battery storage in their 2024 load forecast submission, which will result in a lower net peak and smaller RA allocation for calendar year 2024.

4.3 FLEXmarket

Background: In November 2021 the Board approved a program plan for the establishment of an innovative "virtual power plant" using what is known as FLEXmarket. FLEXmarket is a market-based program structure that provides incentives to program "aggregators" to implement programs for energy efficiency and load shaping. The novel elements of the structure include a "pay-for-performance" approach which only provides

incentives on confirmed performance using meter data. This novel structure was innovated by MCE and is also being implemented by East Bay Community Energy and Sonoma Clean Power. In addition, the program plan was developed for submission to the CPUC to allow Peninsula Clean Energy to run the program with fully reimbursed funding through the CPUC. Peninsula Clean Energy's billing data services provider Calpine has entered into a strategic partnership with the firm Recurve to provide FLEXmarket services through a streamlined structure.

Status: The residential FLEXmarket is officially open. Providers of energy efficiency and building electrification equipment can apply for incentives through this program. In addition, Peninsula Clean Energy anticipates submitting its own projects to receive CPUC funds under the program. Staff is developing the commercial version of the program to be launched later in 2023.

4.4 Community Solar, DAC-GT & CSGT

Background: The Disadvantaged Communities Green Tariff program ("DAC-GT") and associated Community Solar Green Tariff ("CSGT") are community solar programs developed by the California Public Utilities Commission (CPUC) to enable DAC residents to participate in renewable energy projects, and to promote development of renewable projects in DACs. Participating customers will receive a 20% discount on their full electric bill (PG&E and Peninsula Clean Energy charges). Peninsula Clean Energy administers these programs on behalf of its customers.

Peninsula Clean Energy began enrolling DAC-GT customers in San Mateo County in January 2022 and customers in Los Banos in April 2022. Those customers are currently served by an interim resource procured from Marin Clean Energy pending Peninsula Clean Energy's procurement of a new renewable resource for the program.

Per the CPUC DAC program guidelines, Peninsula Clean Energy is authorized to procure up to 3MW of solar capacity. Until a new solar resource is procured, Peninsula Clean Energy will serve customers from MCE's interim resource. Peninsula Clean Energy executed a PPA with Marin Clean Energy for its existing Goose Lake Solar project, which meets DAC program guidelines, to provide for its DAC customers until a permanent resource is procured.

Status: The program is currently serving approximately 1,000 customers. Peninsula Clean Energy signed a PPA with Renewable America, LLC for a 3MW solar resource located in Dos Palos, CA, approximately 15 miles southeast of the City of Los Banos. The Dos Palos Clean Power solar project has a Commercial Operation Date of August 1, 2023. In June, staff expanded their contract with MCE's interim resource Goose Lake Solar to 3.74MWdc. This will allow more customers to subscribe to the program and receive on-bill benefits.

Staff launched a Request for Proposals for 402kW of solar as part of their Community Solar Green Tariff ("CSGT"). Proposals were due by February 28, 2023 and are now being evaluated.

Strategic Plan

- Distributed Energy Resources: Support strategic decarbonization and local power
  - Key Tactic 1: Create minimum of 20 MW of new local renewable power sources in PCE service territory by 2025
  - Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization
  - Key Tactic 3: Foster Resilience

5 Transportation Programs

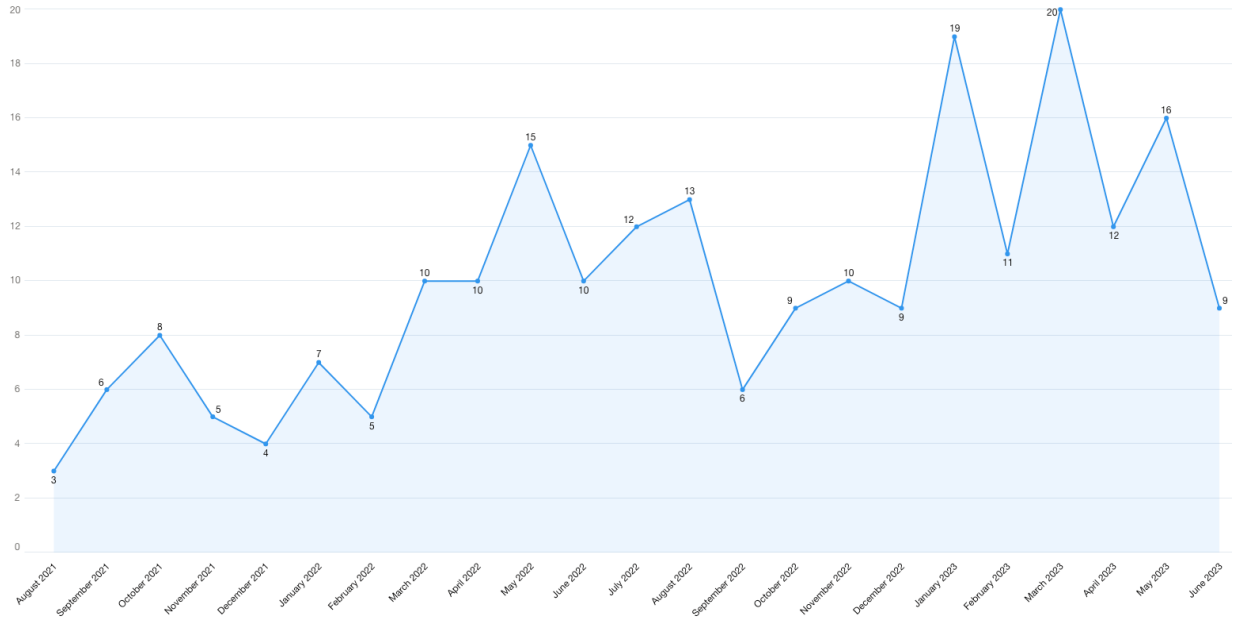
5.1 Used EV Rebate Program

Background: Launched in March 2019, the Used EV Rebate Program (formerly referred to as "DriveForward Electric") provided an incentive up to $4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less).

In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County and Los Banos residents, while maintaining the increased incentives for income-qualified residents. In February 2021, Peninsula Clean Energy executed a competitively bid contract with GRID Alternatives ("GRID") to administer the expanded program. This rebate is available point-of-sale at qualifying dealerships or post-purchase. The incentives may be combined with other state-funded income-qualified EV incentive programs.

Status: Since the re-launch of the program in August 2021, 229 rebates have been provided under the new program (see monthly chart below).

Used EV rebates paid by month



Strategic Plan

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

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

5.2 "EV Ready" Charging Incentive Program

Background: In December 2018 the Board approved $16 million over four years for EV charging infrastructure incentives ($12 million), technical assistance ($2 million), workforce development ($1 million), and administrative costs ($1 million). Subsequent to authorization of funding, Peninsula Clean Energy successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional $12 million in San Mateo County for EV charging infrastructure. Of Peninsula Clean Energy's $12 million in incentives, $8 million was previously administered through the CEC's California Electric Vehicle Incentive Project (CALeVIP) and $4 million under a dedicated, complementary Peninsula Clean Energy incentive fund. The dedicated Peninsula Clean Energy incentives address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, and public agency new construction. In August, Peninsula Clean Energy elected to directly administer the not yet approved pool of funds that were previously administered through CALeVIP, worth approximately $4 million, further described below.

Status: Peninsula Clean Energy implemented changes in August 2022 to expedite installations, including providing customers with greater flexibility in selecting contractors, adjusted incentive levels to account for rising costs, and direct management of all Level 2 projects not already approved by the Center for Sustainable Energy in the CALeVIP program (worth approximately $4 million in funding). Since the changes were implemented in mid-August, there has been significant uptake in the program. Over ten new contractors have been added to the Technical Assistance component of the program, including 4 minority or woman-owned businesses. Customers receiving Technical Assistance may choose from these contractors or another of their choosing.

Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in PCE Technical Assistance	194	2,000+	-
# of Technical Assistance site evaluations approved by PCE	158	1,800	-
Total # of funding applications approved in Peninsula Clean Energy incentive program	104	1,700	$5.8 million
# of approved funding applications in progress in Peninsula Clean Energy incentive program	87	1,400	$5.2 million
# of current CALeVIP applications*	40	630	
Total # of ports installed	30	432	$1.5 million

*Includes DCFC and L2 ports: 272 DCFC, 358 L2 ports

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 3: Support workforce development programs in the County

5.3 E-Bikes for Everyone Rebate Program

Background: The Board initially approved the income-qualified E-Bikes Rebate program in July 2020 with a budget of $300,000, approved an increase of an additional $300,000 in December 2022, and approved a further increase of $150,000 in August 2022, bringing the total program budget to $750,000.

The program runs in annual cycles and is available to residents with low to moderate incomes. The program has provided 510 rebates since 2021. Customers can use the rebate either at a qualifying bike shops for a point-of-sale discount, or at any other shop for a post-purchase rebate. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, Chain Reaction, and Epicenter Cycling. Rebates will be distributed on a first-come, first-served basis.

Status: This program reopened on June 12 for income-qualifying customers. There is enough available funding for 238 bikes. Staff will enroll 500 applicants since we expect a 50% attrition rate. Everyone after that will be placed on a waiting list.

Staff is marketing this program to CARE/FERA customers and through Peninsula Clean Energy's Outreach Grant partners.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

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

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

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

5.4 Public EV Fleet Program

Background: The Board approved the Public EV Fleet Program in November 2020. This program will run for three years with a total budget of $900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies. In August 2022, the Board of Directors approved a contract with Optony to assist in administration of this program. A workshop was held on November 16 to promote the program and recruit local agency fleet managers.

Status: The program has now started. Menlo Park, Burlingame, San Mateo, South San Francisco, and Daly City are now receiving technical assistance. Menlo Park will be installing several charging stations for fleet vehicles at the City Hall, Police Department, and Corporation Yard. Pre-construction site designs have been developed as part of the program. Other agencies are encouraged to apply, when ready, at https://www.peninsulacleanenergy.com/public-ev-fleets-program/.

Strategic Plan:
Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings
- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact
- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

5.5 Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is Peninsula Clean Energy's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications with up to 100 EVs. Because ride-hail vehicles drive much higher than average miles per year, each vehicle in this electrification pilot is expected to save over 2,000 gallons of gas and 20 tons of greenhouse gas emissions per year.

Status: The 100 EV fleet has been put into service by Lyft and Peninsula Clean Energy is monitoring progress. Over 250 thousand rides have been provided. 350+ unique drivers have already rented them, with each rental averaging over three months. Over 3.5 million all electric miles have been driven so far with an average of 120 miles/day per vehicle, comparable to gas counterparts. Vehicles include a customer-facing PCE branded placard that informs riders about the pilot and directs them to the PCE website for more information.

Strategic Plan
Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings
- Key Tactic 2: Bolster electrification of fleets and shared transportation

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact
- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

EV Managed Charging Pilot

Background: Peninsula Clean Energy aims to facilitate EV charging that avoids expensive and polluting evening hours through "managed charging" systems. This work is in the second phase of a pilot. In 2020, Peninsula Clean Energy ran a proof-of-concept pilot for EV managed charging with startup FlexCharging to test timing of EV charging through vehicle-based telematics. This was a limited pilot with approximately 10 vehicles. The system utilizes existing Connected Car Apps and allows Peninsula Clean Energy to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The pilot is moving to Phase 2 intended for a larger set of 1,000+ vehicles. In October of 2021, the Board approved a contract up to $220,000 with the University of California, Davis' Energy Economics Program (DEEP) to develop and advise on an incentive structure experiment that will be used to inform the Peninsula Clean Energy managed charging program design. This collaboration has been ongoing. In November, the Board approved a contract up to $220,000 with ev.energy as the platform provider for EV managed charging services.

Status: The project began development in December, including platform and data warehouse systems preparation. Large-scale recruitment recently launched, targeting a random sample of EV drivers, with the goal of recruiting at least 1,000 customers for the pilot. 200+ participants have already joined after the initial recruitment round, several additional recruitment campaigns are upcoming. A Technical Advisory Committee, consisting of staff from CEC, CPUC, CCAs, and NGOs, is also informing the pilot with an upcoming meeting in late July. .

Strategic Plan

Goal 3 – Community Energy Programs

Community Benefits: Deliver tangible benefits throughout our diverse communities

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

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

- Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization
    - Pilot and scale EV load shaping programs to ensure that 50% of energy for EV charging takes places in non-peak hours

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: June 9, 2023
BOARD MEETING DATE: June 22, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Roy Xu, Director of Energy Programs

SUBJECT: Energy Supply Procurement Report – June 2023

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

DISCUSSION

Execution Month	Purpose	Counterparty	Term
April	Purchase of Resource Adequacy	Direct Energy Business Marketing, LLC	24 Months
May	Purchase of Resource Adequacy	SEMPRA GAS & POWER MARKETING, LLC	12 Months
May	Purchase of Resource Adequacy	East Bay Community Energy Authority	2 Months
May	Purchase of Resource Adequacy	Calpine Energy Services, L.P.	12 Months
May	Purchase of Resource Adequacy	Pacific Gas & Electric Company	1 Month
May	Purchase of Resource Adequacy	City of Vernon	1 Month
June	Purchase of Resource Adequacy	Southern California Edison Company	1 Month
June	Purchase of Resource Adequacy	Southern California Edison Company	1 Month
June	Purchase of Resource Adequacy	San Diego Gas & Electric Company	1 Month

June	Purchase of Resource Adequacy	City of Banning	1 Month
June	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	1 Month
June	Sale of Import Allocation Rights for Resource Adequacy	Silicon Valley Clean Energy	1 Month

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

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

1) **Short-Term Agreements:**
   a. Chief Executive Officer has authority to approve Energy Procurement contracts with terms of twelve (12) months or less, in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.
   b. Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE's three (3) year forward capacity obligations measured in MW, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.
   c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.
   d. The CEO shall report all such agreements to the PCE board monthly.

Table 1:

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

Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by November 31st of the prior year	Up to 12 months

2) **Medium-Term Agreements:** Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The CEO shall report all such agreements to the PCE board monthly.

3) **Intermediate and Long-Term Agreements:** Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4) **Amendments to Agreements**: Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

STRATEGIC PLAN

The contracts executed in April, May and June support the Power Resources Objective 2 for Procurement: Procure power resources to meet regulatory mandates and internal priorities at affordable cost.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

This item will be published as part of the July 27, 2023 Board of Directors Meeting.

COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP- Arrears Management Plans
AQM – Air Quality Management
BAAQMD – Bay Area Air Quality Management District
BLPTA – Buyer Liability Pass Through Agreement
CAC – Citizens Advisory Committee
CAISO – California Independent System Operator
CalCCA – California Community Choice Association
CAM – Cost Allocation Mechanism
CAP – Climate Action Plan
CAPP – California Arrearage Payment Program
CARB – California Air Resources Board, or California ARB
CARE- California Alternative Rates for Energy Program
CBA – California Balancing Authority
3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)
CCA – Community Choice Aggregation (aka Community Choice Programs (CCP) or
CCE – Community Choice Energy (CCE)
CCP – Community Choice Programs
CEC – California Energy Commission
CPP- Critical Peak Pricing
CPSF – Clean Power San Francisco
CPUC – California Public Utility Commission (Regulator for state utilities) (Also PUC)
CSD – California Department of Community Services and Development
CSGT - Community Solar Green Tariff
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
DG – Distributed Generation
DOE – Department of Energy
DR – Demand Response
DRP – Demand Response Provider
DRP/IDER – Distribution Resources Planning / Integrated Distributed Energy Resources
EBCE – East Bay Community Energy
ECOplus – PCE's default electricity product, 50% renewable and 50% carbon-free (in 2021)
ECO100 – PCE's 100% renewable energy product
EDR – Economic Development Rate
EE – Energy Efficiency
EEI – Edison Electric Institute; Standard contract to procure energy & RA
EIR – Environmental Impact Report
ELCC – Effective Load Carrying Capability
ESP – Electric Service Provider

ESS – Energy Storage Systems
ESSA – Energy Storage Services Agreement
ERRA – Energy Resource Recovery Account
EV – Electric Vehicle
EVSE – Electric Vehicle Supply Equipment (Charging Station)
FERA- Family Electric Rate Assistance Program
FERC – Federal Energy Regulatory Commission
FFS – Franchise Fee Surcharge
GHG – Greenhouse gas
GHG-Free – Greenhouse gas free
GTSR – Green Tariff Shared Renewables
GWh – Gigawatt Hours (Energy) = 1000 MWh
IDER – Integrated Distributed Energy Resources
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
IRP – Integrated Resource Plan
IVR – Interactive Voice Response
ITC – Investment Tax Credit (it's a solar tax credit)
JCC – Joint Cost Comparison
JPA – Joint Powers Authority
JRC – Joint Rate Comparison
JRM – Joint Rate Mailer
kW – kilowatt (Power)
kWh – Kilowatt-hour (Energy)
LDS – Long Duration Storage
LDES – Long Duration Energy Storage
LIHEAP- Low Income Home Energy Assistance Program
Load Shaping – changing when grid energy is used
LSE – Load Serving Entity
MCE – Marin Clean Energy
Methane Gas - formerly known as 'natural gas'
Microgrid – building or community energy system
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
NEM – Net Energy Metering
NERC – North American Electric Reliability Corporation
NDA – Non-Disclosure Agreement
NG – Natural Gas
OBF – On-bill Financing
OBR – On-bill Repayment
OES – Office of Emergency Services
OIR – Order Instituting Rulemaking
PACE – Property Assessed Clean Energy
PCC – Portfolio Content Category (aka "buckets") – categories for RPS compliance
PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)
PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)
PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
PLA – Project Labor Agreement
POU – Publicly Owned Utility
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
SB xx – Senate Bill xx
SCP – Sonoma Clean Power
SJCE – San Jose Clean Energy
SJVAPCD - San Joaquin Valley Air Pollution Control District
SMD – Share My Data, interval meter data
SQMD – Settlement Quality Meter Data
SVCE – Silicon Valley Clean Energy
TEF – Transportation Electrification Framework (CPUC Proceeding)
TNCs – Transportation Network Companies (ridesharing companies)
TOB – Tariff on Bill
TOU RATES – Time of Use Rates
VGI – Vehicle-Grid Integration
V2G – Vehicle-to-Grid
VPP – Virtual Power Plant
WECC – Western Energy Coordinating Council
WREGIS – Western Renewable Energy Generation Information System
WSPP – Western Systems Power Pool; standard contract to procure energy and RA