



**Marin Energy Authority
Board of Directors Meeting
Thursday, July 11, 2013
7:00 P.M.**

Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Alexandra Cock
Town of Corte Madera

Larry Bragman
Town of Fairfax

Len Rifkind
City of Larkspur

Ken Wachtel
City of Mill Valley

Denise Athas
City of Novato

Tom Butt
City of Richmond

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

781 Lincoln Avenue
Suite 320
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.com

**San Rafael Corporate Center, Tamalpais Room
750 Lindero Street, San Rafael, CA 94901**

Agenda – Page 1 of 2

- 1. Board Announcements (Discussion)**
- 2. Public Open Time (Discussion)**
- 3. Report from Executive Officer (Discussion)**
- 4. Consent Calendar**
 - C.1 6.6.13 Board Meeting Minutes**
 - C.2 Monthly Budget Report**
 - C.3 MEA Community Affairs Staff Position**
 - C.4 First Addendum to Fourth Agreement with Green Ideals**
 - C.5 Response to Grand Jury Report**
 - C.6 Amended Power Purchase and Sale Agreement with RE Kansas, LLC**
 - C.7 Policy 007: Mileage and Toll Reimbursement**
 - C.8 First Addendum with Ellison, Schneider & Harris**
- 5. Resolution 2013-07 Honoring Board Member Alexandra Cock (Discussion/Action)**
- 6. Five Agreements with Calpine Energy Services L.P. for Power Supply Including Renewable Energy and Resource Adequacy (Discussion/Action)**



Agenda material can be inspected in the Marin County Sheriff's lobby, located at 3501 Civic Center Drive, San Rafael, CA 94903. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MEA program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.com not less than **four work days** in advance of the event.



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Agenda – Page 2 of 2

7. Communications Update (Discussion)

8. Regulatory Update (Discussion)

9. Board Member & Staff Matters (Discussion)

10. Adjourn



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**MARIN ENERGY AUTHORITY
BOARD MEETING
THURSDAY, June 6, 2013
7:00 P.M.
SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present: Damon Connolly, City of San Rafael, Chair
Kathrin Sears, County of Marin
Bob McCaskill, City of Belvedere
Diane Furst, Town of Corte Madera
Len Rifkind, City of Larkspur
Denise Athas, City of Novato
Tom Butt, City of Richmond
Ford Green, Town of San Anselmo
Ray Withy, City of Sausalito
Emmett O'Donnell, Town of Tiburon

Absent: Larry Bragman, Town of Fairfax
Ken Wachtel, City of Mill Valley
Carla Small, Town of Ross

Staff: Dawn Weisz, Executive Officer
Elizabeth Kelly, Legal Director
Beckie Menten, Energy Efficiency Coordinator
Jamie Tuckey, Communications Director
Emily Goodwin, Internal Operations Coordinator
Shalini Swaroop, Regulatory Counsel
John Dalessi, Technical Consultant
Kirby Dusel, Technical Consultant
Alex DiGiorgio, Community Affairs Representative
Darlene Jackson, Clerk

Public Session: 7:12 PM

Agenda Item #1- Board Announcements (Discussion)

None

Agenda Item #2 – Public Open Time (Discussion)

Ronnie Bargotta, CEO, a small start-up San Jose energy company, introduced his company to MCE and invited MCE

and perhaps a third party expert to visit his facility and learn about their progress. Chair Connolly expressed appreciation to Mr. Bargotta on behalf of the Board for his introduction and explained because he is not on the agenda, the Board is unable to discuss the topic in greater detail.

Agenda Item #3 –Resolution 2013-05 Commemorating Richard Collins

Time was allocated for comments: Executive Officer Weisz shared her gratitude and expressed thanks for Dick's years of service on the Board and having had the opportunity to know and work with him. Each board member took turns reading recitals of the resolution. Ms. Weisz also explained the tradition of a plant presentation and how it will live in the MEA office in memory of Dick Collins.

Barbara Thornton, original MEA Board member and former colleague of Dick Collins had sentiments to share, as did Directors Connolly and O'Donnell.

M/s Sears/Greene (passed 10-0-3) approved Resolution 2013-05 Commemorating the Life and Legacy of Richard "Dick" Collins. Directors Bragman, Small and Wachtel were absent.

Agenda Item #4 – Report from Executive Officer (Discussion)

Executive Officer Dawn Weisz reported on the following:

1. July Board Meeting rescheduled to July 11th due to July 4th holiday. We have 10 confirmed Board members so please notify Darlene as soon as possible to ensure that we have a quorum for that meeting. Attendance is important as we typically do not have a Board meeting in August.
2. Annual September Board Retreat. This is a full day commitment, we are looking at Monday 9/23 as well as Wednesday 9/25 as possible dates and it looks like Wednesday 9/25 is the preferred date. Once all have responded, an invitation will be sent out to everyone. Please respond to Darlene's Doodle Poll and the invitation upon receipt.
3. Press regarding Mill Valley's Green Power Community sign, specifically the decision of where to display their sign, created some debate amongst city leadership. She suggested that other communities might want to facilitate similar dialogue when positioning their signs to stir interest in the program and some sense of ownership as to where it is located for optimal impact.

Agenda Item #5 – Consent Calendar (Discussion/Action)

- C.1 Minutes from 5.2.13 Board Meeting
- C.2 Monthly Budget Report
- C.3 Report on Approved Contracts

M/s Sears/Athas (passed 9-1-3) approved all items on the consent calendar. Directors Bragman, Small and Wachtel were absent. Director Furst abstained.

Agenda Item #6 Energy Efficiency Update (Discussion)

Energy Efficiency Coordinator, Beckie Menten, reported on the accomplishments and progress of various stages of the Energy Efficiency (EE) program.

Accomplishments:

- Small Commercial – program is in full swing and has been conducting door to door canvassing in San Rafael during the months of April and May.
- Pros and Cons of whole building approach on small commercial.
- Proposed coordination with Richmond SmartLight program in Marin County.

Multifamily

- The multifamily program is in full swing with three projects in progress and six in the pipeline.

Single Family

- Schools pilot program is in full swing.
- The 'My Energy Tool' website was linked to the Google Analytics site which will provide MEA with information on web traffic to the web portal.

Financing

Multifamily and Small Commercial On-Bill Payment (OBR)

- The Operating Agreement for the small commercial and multifamily OBR program is an important step towards finalizing the OBR program.
- Energy Efficiency staff is working with program subcontractors to ensure that energy evaluation reports include information about the availability of financing.

Single Family OBR

- Executed Term Sheet with First Community Bank for MCE consumer loan program.
- Unsecured lending available at 6.5% interest rate for FICO's as low as 640.

Ms. Menten responded to questions from the Board and a recommendation from Chair Connolly that a communications strategy be developed so that the public is made aware. Director Connolly expressed Board appreciation for the time that Ms. Menten takes to evaluate all aspects of the EE program.

Ms. Menten commended Program Coordinator, Rafael Silberblatt, for his support and participation provided on the communications front and working with the public at various fairs and events.

Communications Director, Jamie Tuckey, explained a new aspect of MEA's participation in the fair this year in the form of sponsorship of activities, etc. Director Greene recommended that live demonstrations be made available as well, specifically to promote the My Energy Tool.

NOTE: DIRECTOR BRAGMAN ARRIVED AT THE BEGINNING OF AGENDA ITEM #6 PRESENTATION.

Agenda Item #7 Agreement with River City Bank to Provide Services for the MCE On-Bill Repayment Program (Discussion/Action)

Energy Efficiency Coordinator, Beckie Menten, briefly explained the relationship between MEA and River City Bank and some of the services they will provide to MEA through this agreement. She also discussed how the RCB role and responsibilities are directly related to the OBR program, its funding and services provided.

Ms. Menten responded to questions from the Board. Chair Connolly thanked Ms. Menten for her efforts in the implementation and maintenance of the energy efficiency program.

M/s Sears/Green (passed 11-0-2) approved Resolution 2013-06 Authorizing approval of the Agreement with River City Bank to Provide Services for the MCE On-Bill Repayment Program and authorizing the Executive Officer to make non-material changes to the Agreement as necessary. Directors Small and Wachtel were absent.

Agenda Item #8 MEA Green House Gas Emissions Analysis & Reporting (Discussion/Action)

Technical Consultant, Kirby Dusel, presented on Green House Gas Emissions.

- The usage, distribution and web posting of MCE's Emission Factor Certification Template as provided by the Climate Registry is now available for our customers.
- Understanding MCE's GHG Emission Factors was also discussed.

Mr. Dusel responded to questions from the Board and the public.

M/s Sears/Green (passed 11-0-2) approved the use, distribution and web posting of 1) MCE's Emission Factor Certification Template, as provided by The Climate Registry; and 2) the "Understanding MCE's GHG Emission Factors" document. Directors Small and Wachtel were absent.

Agenda Item #9 – Communications Update (Discussion)

Communications Director, Jamie Tuckey, briefly discussed following updates:

- 15 meetings have been added to the Community Events list since the April meeting.
- Call center update; 24-hour support during enrollment so that people may call in and be assured of being attended to by someone live. She provided opt out percentages and shared that call hold times have been kept to a minimum.
- Richmond advertisements – April through July in several local and demographic specific print publications and online forums.
- Website traffic is following trend of traffic to the call center.
- Significant deep green interest in Richmond thus far.

Website Traffic Sources

- Direct
- Search Engines
- Referral/Campaign traffic
- Traffic by City

Ms. Tuckey responded to questions from the Board.

Agenda Item #10 – Employee Commute Alternatives Program (Discussion/Action)

Internal Operations Coordinator, Emily Goodwin, presented a summary of the proposed program and described how MEA can capitalize on this type of alternatives program.

- This would be a 6-month pilot to be reevaluated in January 2014.
- The annual program cost is expected to range from \$4500-\$6800.

- Feedback was incorporated from Executive Committee and staff along with industry best practices.
- The program can serve as an important feature of the employee benefits package that simultaneously enhances one of MEA's primary agency goals: to reduce GHG emissions.

M/s Sears/Athas (passed 11-0-2) approved proposed MEA Employee Commute Alternatives Program and direct staff to proceed with implementation. Directors Small and Wachtel were absent.

Agenda Item #11 – Regulatory Update (Discussion)

Legal Director, Elizabeth Kelly, provided an update on:

- Petition for Rulemaking
- Long Term Procurement Plan (LTPP)

PG&E produced requested SMARTmeter data that has been used by the Energy Efficiency program.

Ms. Kelly responded to questions from the Board.

Agenda Item #12 Board Member & Staff Matters (Discussion)

Director Sears announced there was a joint meeting of county supervisors in Napa, Executive Officer Weisz presented and things went very well.

Director Greene spoke briefly about MEA being in a good position in terms of its public profile. He thanked the staff and encouraged them to continue with their contributions in maintaining such an excellent position and pushing to maintain that position. He also suggested that, since MEA is in such a favorable position in the public eye, staff check into what it would take to have an MEA sign made available on SRCC campus. Internal Operations Coordinator, Emily Goodwin, will check into it and report at next Board meeting.

Agenda Item #13 – Adjourn

9.18PM

Damon Connolly, Chair, Marin Energy Authority

ATTEST:

Dawn Weisz, Executive Officer



July 11, 2013

TO: Marin Energy Authority Board
FROM: Emily Goodwin, Internal Operations Coordinator
RE: Monthly FY 14 Budget Report (Agenda Item #4 - C.2)
ATTACHMENT: May 2013 Budget Update (Unaudited)

Dear Board Members:

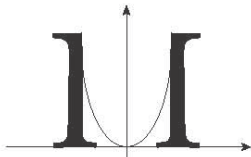
SUMMARY:

The attached budget update compares the recently adopted FY 2014 budget to the unaudited revenue and expenses of MEA for the month ending May 2013.

Expenses were 89% of plan. Ongoing communications expenses are associated with the planned Richmond expansion. Communications expenditures were directly related to remaining advertising, in addition to the design, print and postage fees of Richmond communications and outreach.

Overall, MEA continues to spend below projections, as reflected in year-to-date figures.

Recommendation: No action needed. Informational only.



MAHER ACCOUNTANCY

1101 FIFTH AVENUE • SUITE 200 • SAN RAFAEL, CA 94901

Financial Plumbline

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Marin Energy Authority

We have compiled the accompanying budgetary comparison schedules of Marin Energy Authority (a California Joint Powers Authority) for the period ended May 31, 2013. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America.

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements with undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement.

We are not independent with respect to Marin Energy Authority.

Maher Accountancy

June 20, 2013



MARIN ENERGY AUTHORITY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through May 31, 2013

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Revenue - Electricity (net of allowance)	\$ 86,865,000	\$ 10,269,844	\$ 76,595,156	11.82%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Cost of energy	76,427,000	10,319,119	66,107,881	13.50%
Staffing	1,562,000	213,608	1,348,392	13.68%
Technical consultants	594,000	98,500	495,500	16.58%
Legal counsel	335,000	19,463	315,537	5.81%
Communications consultants and related expenses	650,000	232,668	417,332	35.80%
Data manager	2,534,000	336,155	2,197,845	13.27%
Service fees- PG&E	603,000	79,004	523,996	13.10%
Other services	333,000	27,987	305,013	8.40%
General and administration	297,000	52,792	244,208	17.78%
Marin County green business program	15,000	-	15,000	0.00%
Solar rebates	10,000	-	10,000	0.00%
Total current expenditures	<u>83,360,000</u>	<u>11,379,296</u>	<u>71,980,704</u>	<u>13.65%</u>
CAPITAL OUTLAY	20,000	-	20,000	0.00%
DEBT SERVICE	1,195,000	244,195	950,805	20.43%
Total expenditures	<u>84,575,000</u>	<u>11,623,491</u>	<u>\$ 72,951,509</u>	<u>13.74%</u>
Net increase (decrease) in available fund balance	<u>\$ 2,290,000</u>	<u>\$ (1,353,647)</u>		

**MARIN ENERGY AUTHORITY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through May 31, 2013**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 2,100,000	\$ 145,507	\$ 1,954,493	6.93%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>2,100,000</u>	<u>145,507</u>	<u>1,954,493</u>	<u>6.93%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

**LOCAL DEVELOPMENT RENEWABLE ENERGY FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through May 31, 2013**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 51,536	\$ 51,536	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>51,536</u>	<u>-</u>	<u>51,536</u>	<u>0.00%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 51,536</u>		



July 11, 2013

TO: Marin Energy Authority Board

FROM: Jamie Tuckey, Communications Director
Dawn Weisz, Executive Officer

RE: Community Affairs Staff Position (Agenda Item #4 - C.3)

ATTACHMENT: Proposed Job Description for Community Affairs Coordinator

Dear Board Members:

SUMMARY: Marin Energy Authority (MEA) has continued to grow in its customer base, range of program offerings, and involvement in the regulatory arena. The agency is also significantly increasing its customer base by offering service to Richmond customers in July 2013. There are related demands on staff time, some of which have been covered through a Climate Corps employee working on community affairs tasks, with a term that is coming to an end. The need for current and new community affairs tasks can be covered, through the addition of a new staff position which has been structured to reflect and more clearly define tasks that are currently being covered through the Climate Corps employee.

A detailed job description for this position is attached for review. The proposed job description has been structured to provide basic documented information for compliance with the Americans with Disabilities Act and appropriate qualifications, knowledge, skills and other requirements that are job-related and meet legal guidelines as determined by the Fair Labor Standards Act.

Community Affairs Coordinator

The Community Affairs Coordinator would work under direction from the Communications Director and would have a wide range of responsibilities for advancing MEA's programs, and conducting strategic community outreach and advocacy for the Public Affairs division.

The Community Affairs Coordinator would interface with a wide range of community, stakeholder, and customer groups. S/he would conduct strategic outreach and community organizing efforts to advance MEA programs. S/he would be responsible for cultivating, developing, and maintaining relationships with key customer and stakeholder groups, and for communicating MCE's central messages consistently to target audiences via professional networking, printed literature, web-based material, electronic correspondence, public presentations, and verbal interactions. The Community Affairs Coordinator would also participate in community events and perform related work and tasks as needed. S/he would conduct local government outreach, and respond to inquiries from customers via email, telephone, and in-person dialogue.

Funds for this position would be covered by the existing Staffing budget allocation. No

additional funds would be required.

Recommendation: Approve job description for the MEA Community Affairs Coordinator position and set annual salary range for this position at \$42,000 - \$62,000, with exact compensation to be determined by Executive Officer within existing Board-approved budget.



Community Affairs Coordinator Job Description

Salary Range: \$42,000 – \$62,000

SUMMARY

The Community Affairs Coordinator works under direction from the Communications Director and has a wide range of responsibilities for advancing MEA's programs (including MCE), and conducting strategic community outreach and advocacy for the Public Affairs division.

CLASS CHARACTERISTICS

The Community Affairs Coordinator interfaces with a wide range of community, stakeholder, and customer groups. S/he conducts strategic outreach and community organizing efforts to advance MEA programs. S/he is responsible for cultivating, developing, and maintaining relationships with key customer and stakeholder groups, and for communicating MCE's central messages consistently to target audiences via professional networking, printed literature, web-based material, electronic correspondence, public presentations, and verbal interactions. The Community Affairs Coordinator also participates in community events and performs related work and tasks as needed. S/he conducts local government outreach, and responds to inquiries from customers via email, telephone, and in-person dialogue. The Community Affairs Coordinator is also responsible for sales related activities on MEA's behalf through effective communications and physical visits to customer sites.

ESSENTIAL DUTIES & RESPONSIBILITIES (Illustrative Only)

- Plan, organize and implement community outreach efforts to enhance marketing of MEA services to the general public, customers, and public agencies.
- Initiate and develop collaborative relationships with community members, local business owners, municipal staff, public officials, and other key stakeholders.
- Expand Deep Green customer participation and Light Green re-enrollments, by emailing, in-site visits, and cold-calling if necessary.
- Emphasize product and service features and benefits, quote costs, and discuss customer terms.
- Build and foster a network of referrals to create new opportunities for customer growth.
- Deliver presentations to various community groups and local representatives.
- Participate in public events to distribute information about MCE and interact with members of the public.
- Cultivate partnerships and mobilize public support for Deep Green co-branding and other promotional opportunities.
- Act as a liaison to local groups, civic institutions, and community-based organizations.
- Respond to customer inquiries.

SUPERVISORY RESPONSIBILITIES

Supervisory responsibilities are not required for this position.

BREAK-DOWN OF TIME SPENT ON VARIOUS WORK AREAS

Community outreach and organizing	70%
• Deep Green & Re-enrollment	
• Public Partnership Development	
Responding to customer inquiries	30%

QUALIFICATIONS

- Bachelor's degree in Communications, Public Administration, Environmental Planning, Business, or a related field; or equivalent years of professional experience.

KNOWLEDGE

- Knowledge of environmental policy, public administration, and energy regulation.
- Knowledge of Excel, Word, Adobe Acrobat, and PowerPoint.
- Understanding of diverse communities and cultures.
- Proficient in Spanish.

SKILLS AND ABILITIES

- Possess strong interpersonal and phone etiquette skills, verbal communications, grammatical and professional business skill sets.
- Interact effectively with customers, local community groups, organizations, and MEA staff.
- Manage projects and time efficiently.
- Outgoing, confident and detail oriented.
- Adept at multi-tasking.
- Self-motivated with a strong drive to resolve issues quickly and effectively.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, courtesy, and flexibility.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee must occasionally lift and/or move up to 20 pounds. Some travel may be required.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually moderate.



July 11, 2013

TO: Marin Energy Authority Board

FROM: Jamie Tuckey, Communications Director

RE: First Addendum to Fourth Agreement with Green Ideals (Agenda Item #4 – C.4)

ATTACHMENT: First Addendum to Fourth Agreement with Green Ideals

Dear Board Members:

SUMMARY:

On March 7, 2013, the MEA Board approved a Fourth Agreement with Green Ideals to provide marketing, branding, graphic design and communication services for a total amount not to exceed \$40,000.

Green Ideals has been providing extensive graphic design and marketing work for MCE's energy efficiency program and Richmond-specific advertisements and communications. Anticipated ongoing marketing and graphic design services for these and other marketing campaigns will require additional funds beyond the planned payment schedule under the current Fourth Agreement. The attached First Addendum will increase the contract amount by an additional \$40,000 for a total amount not to exceed \$80,000.

Recommendation: Approve and execute the First Addendum to the Fourth Agreement by and between the Marin Energy Authority and Green Ideals.



FIRST ADDENDUM TO FOURTH AGREEMENT BY AND BETWEEN THE MARIN ENERGY AUTHORITY AND GREEN IDEALS

This FIRST ADDENDUM is made and entered into on July 11, 2013, by and between the MARIN ENERGY AUTHORITY, (hereinafter referred to as "MEA") and GREEN IDEALS (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MEA and the Contractor entered into an agreement for marketing, branding, and communication services for MCE which commenced on April 1, 2013 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated in an amount not to exceed \$40,000; and

WHEREAS, the parties desire to amend the agreement to increase the maximum amount of the contract by \$40,000.

NOW, THEREFORE, the parties agree to modify Section 4 and Exhibit B as set forth below.

AGREEMENT

1. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.
2. Section 4 and Exhibit B are hereby amended to read as follows:

Section 4 – Maximum Cost to MEA

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of \$80,000 including direct non-salary expenses.

Exhibit B – Fees and Payment Schedule

Contractor shall be compensated at a rate of \$175 per hour. In no event will the maximum cost of services in Exhibit A exceed \$80,000.

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum on the day first written above.

CONTRACTOR:

MARIN ENERGY AUTHORITY:

By: _____

By: _____



July 11, 2013

TO: Marin Energy Authority Board

FROM: Emily Goodwin, Internal Operations Coordinator

RE: Response to Grand Jury Report (Agenda Item #4 - C.5)

ATTACHMENT: A. Grand Jury Report: Garbology in Marin: Wasted Energy
B. Letter from Grand Jury to MEA RE: Grand Jury Report
C. Draft Response to Grand Jury Report for Honorable Judge Ritchie
D. Draft Response to Grand Jury Report from Rich Treadgold

Dear Board Members:

SUMMARY:

In May, 2013, MEA received a report from the Grand Jury titled: Garbology in Marin: Waste Energy. The Report relates to the Redwood Landfill use of waste-to-energy technology. The Grand Jury has requested that MEA respond to three of their recommendations (R1, R3, and R4) in the attached report and we must adhere to penal code section 933 (c) in our response process, which includes including Brown Act noticing.

With input from Greg Stepanicich, MEA Municipal Counsel, MEA staff have prepared a draft response that legally and appropriately responds to the requests and is attached here for your review. MEA must respond by stating whether each of the recommendation has been implemented, has not been implemented, or requires further analysis by MEA by filing out a standard response form and providing supplemental detail as needed through additional documentation (also attached).

In short, the proposed response is as follows:

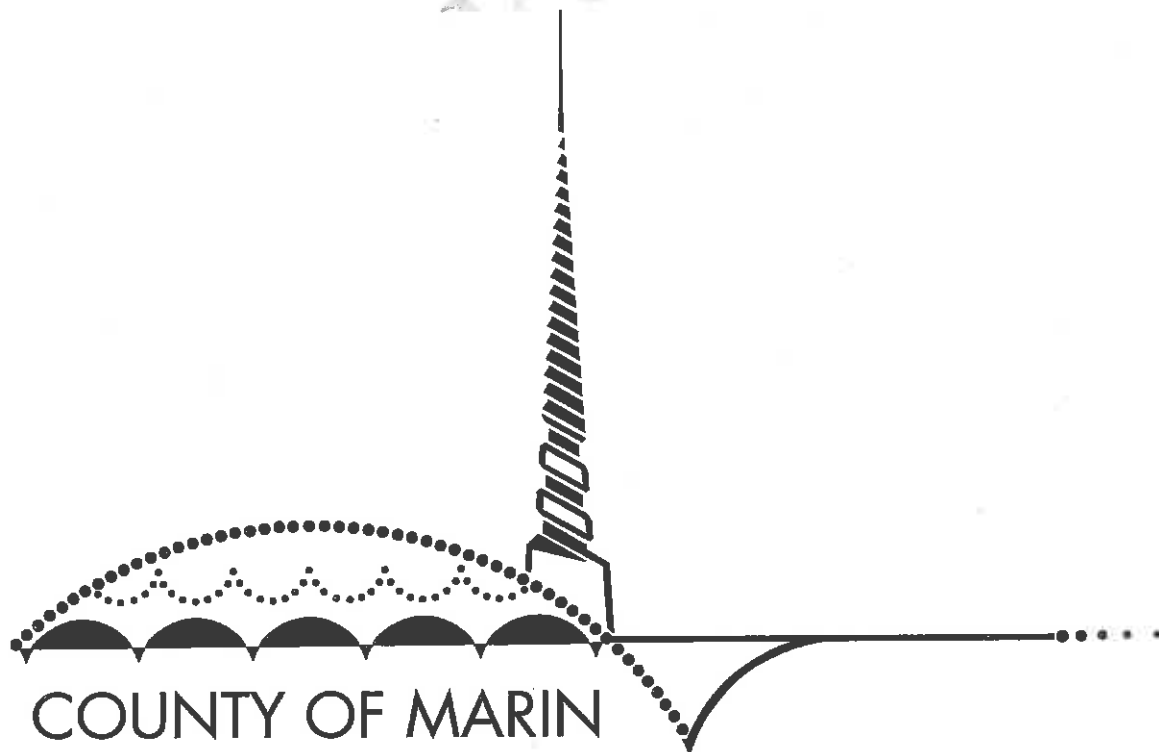
"Recommendations numbered R-1, R-3 and R-4 will not be implemented because they are not warranted or are not reasonable. Although the MEA fully supports the development of a waste-to-energy facility at the RLI landfill in Marin County, it cannot implement recommendations numbered R-1, R-3 or R-4 because it is not one of the public agencies referenced in these recommendations. Further, the MEA does not have any planning, regulatory or management authority with respect to this landfill."

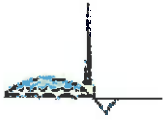
Recommendation: Approve response to the Grand Jury Report: Garbology in Marin: Wasted Energy.

2012/2013 MARIN COUNTY CIVIL GRAND JURY

Garbology in Marin: Wasted Energy

Report Date - May 8, 2013
Public Release Date - May 14, 2013





GARBOLOGY IN MARIN: WASTED ENERGY

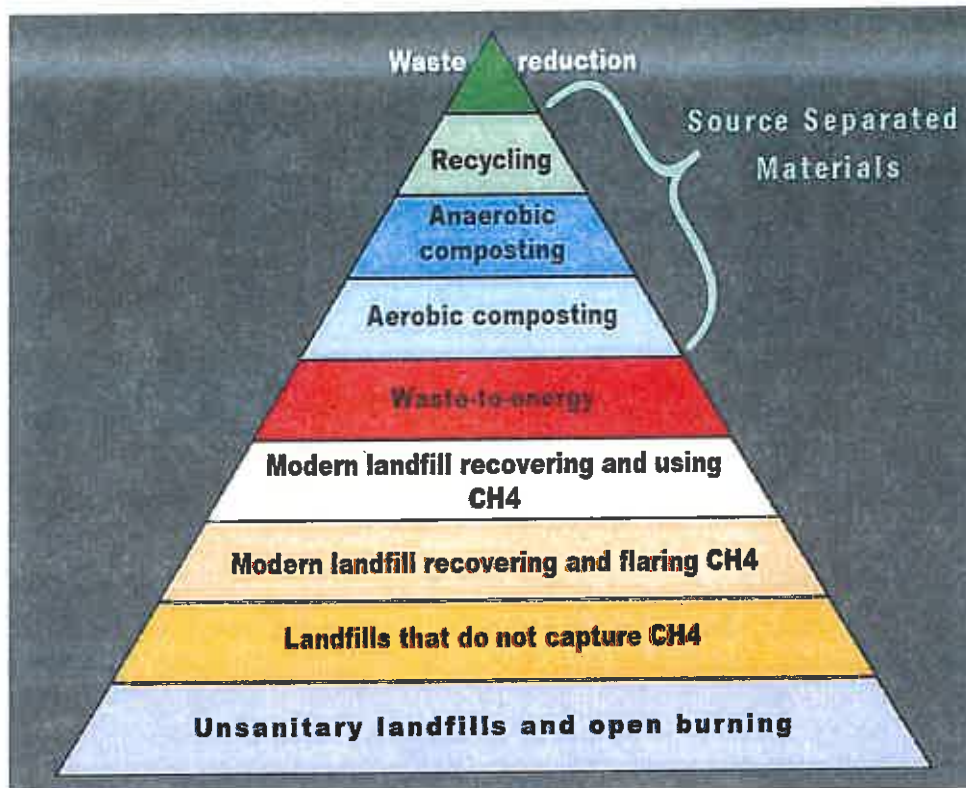
SUMMARY

Redwood Landfill Inc. (RLI), Marin County's only solid waste landfill, is nearing the end of its useful life. Based on a 2008 Environment Impact Report (EIR), the landfill applied for and received a new Solid Waste Facility Permit in 2008 (the 2008 PERMIT), but the validity of the EIR and the 2008 PERMIT were successfully challenged in court. If the appeal currently pending is denied, the landfill will be forced to operate under its 1995 PERMIT, thereby reducing the maximum allowable disposal, which could force its closure within 7-9 years, (2020-2022).¹

Depending on the outcome of the appeal, these are the three alternative outcomes:

- 1) If the landfill appeal is denied, a new EIR will be required for RLI to receive an updated permit. This process could take years to complete - the 2008 EIR, which was the basis for the 2008 PERMIT was started in 2003. RLI could take on this process, although it has expressed no certainty that it will do so.
- 2) If the landfill appeal is denied, RLI could decide not to pursue a new permit, and simply close the landfill when it reaches the maximum disposable amount under the 1995 PERMIT. In that event;
 - Marin will need to find another landfill, a problematic issue since County officials have stated that it will be impossible to find an alternate site within the County. Not finding an alternate site in Marin County means our trash becomes another county's problem and increases our carbon footprint.
 - Marin would also lose RLI's proposed landfill gas-to-energy plant. Such a plant could possibly create enough electricity to supply approximately 6,000 to 8,000 Marin County homes with renewable green energy.
- 3) If RLI prevails in its appeal and the life of the landfill is extended, the 2008 PERMIT would extend the useful life for a minimum of approximately 19 years (to 2032). In addition, if RLI were to build the proposed landfill gas-to-energy plant, the landfill could also move up one tier in the "Hierarchy of Waste Management" (see illustration below) by producing energy from landfill gas.

¹ The final date would be determined by waste settlement and compaction.



Waste to Energy Research and Technology Council (WTERT)

The pyramid illustrates a spectrum of ways to deal with waste from the least to most desirable. Marin County is striving to reach a landfill diversion rate of 94% (i.e. transporting only 6% of waste to the landfill while 94% is diverted to resource recovery facilities) by 2025². With measures in place, and others outlined in the 2008 PERMIT implemented, RLI could substantially help the County achieve that goal if it wins its appeal.

At the current time, Redwood Landfill is a “modern landfill recovering and flaring CH₄” (Methane Gas) - the third tier from the bottom in the above diagram. As part of its operation, the landfill also composts yard waste and converts construction rubble into reusable construction material. The landfill has committed to moving up to the fourth tier by constructing a landfill gas-to-energy facility if the lawsuit appeal is granted.

There are additional ways of extending the useful life of the landfill by:

- Constructing a waste-to-energy (WTE) facility

² Final Draft Zero Waste Feasibility Study Presented by R3 Consulting Group December 2009

- Exploring possible other biomass conversion (e.g., Anaerobic composting) in sufficient quantities to contribute to Marin's renewable energy needs. Were this implemented, the landfill would move up even further on the waste pyramid.

The Marin County Civil Grand Jury supports the extension of the landfill's life regardless of the outcome of the legal proceedings and hopes that we will not end up with Wasted Energy.

BACKGROUND

Marin County's one remaining landfill originated in 1958 on property owned by Jordon Smith (for whom Smith Ranch Road received its name). Between 1972 and 1998 many significant events occurred relating to the landfill and the handling of solid waste, which are detailed below:

Historical Events

1972	In 1972, California enacted The Solid Waste Management and Resource Recovery Act (Chapter 342, Statutes of 1972) and established the Solid Waste Management Board to create policies for solid waste handling and disposal. Each of the 58 counties was given the task of developing and submitting its long-term solid waste management and resource recovery plans to the Board by January 1, 1976.
1976	The Legislature created a permitting and enforcement program for solid waste facilities to be overseen by local enforcement agencies (LEAs).
1978	Redwood Landfill received its first Solid Waste Facility Permit (PERMIT) to accept sludge and solid waste.
1989	With the threat of running out of landfill space, Californians saw the enactment of AB 939 in 1989. This Act mandated goals of 25 percent diversion of each city and county's waste from disposal by 1995 and 50 percent by 2000. With this legislation the board was reconstituted and named the California Integrated Waste Management Board (CIWMB). This new board regulated landfills and the law required significant investments by operators to meet the new standards.
1990	In 1990, realizing that it would be mutually beneficial to jointly prepare the Integrated Waste Management Plan, Marin's cities and towns and the County entered into a Memorandum Of Understanding (MOU). http://zerowastemarin.org/who-we-are/about-the-jpa/
1991	Jordon Smith sold Redwood Landfill to Sanifill, Inc.

1992	In November 1992, Marin County Environmental Health Services was re-designated as the solid waste Local Enforcement Agency (LEA) ³ for Marin County by the eleven cities and County of Marin and subsequently certified by CIWMB. CIWMB became known as CalRecycle effective 2010.
1995	Sanifill received a new PERMIT, incorporating the changes required by AB 939.
1996	<p>The Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA), was formed to help ensure the County's compliance with AB 939 and now oversees the disposal of solid waste and hazardous materials in Marin County. The JPA is comprised of the County of Marin and the cities and towns of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, and Tiburon.</p> <p>During the same year, USA Waste of California purchased Sanifill, Inc. and the ownership of Redwood Landfill was included. With the new ownership, Redwood Landfill (RLI) instituted additional diversion activities including composting of yard waste, grinding of concrete and asphalt for base rock and gravel, and setting aside metals and appliances delivered by self-haulers for recycling.</p>
1998	Waste Management, Inc. (WM) merged with USA Waste and became the current owner and operator.

Unfortunately, the landfill sits on a 600-acre parcel of land that is surrounded on three sides by the Petaluma River Estuary and Marsh. When RLI requested a new Permit in 1999 to allow for increased landfill capacity and operational changes, the LEA prepared an environmental impact report (EIR). An initial study concluded that substantial changes proposed in 1995 concerning issues related to the proximity of the landfill to water sources and other issues had not been addressed. Once these items had been rectified, a draft EIR was prepared in 2003 and the initial final EIR approved in 2005. The final EIR was twice amended and finally completed in October 2008. With CalRecycle's concurrence, a new Permit was issued to RLI boosting capacity by 9.3 million cubic yards to a total of 26 million cubic yards and allowing continued operation for at least another 19 years.

The NO WETLANDS' Petition

In June 2008, an organization called No Wetlands Landfill Expansion (NO WETLANDS), filed a petition for a writ of mandate not only claiming the right to appeal the EIR certification to the County Board of Supervisors (BOS) but also claiming the EIR was inadequate. The Superior Court issued a judgment in March 2011 on the first issue directing the BOS to hear an administrative appeal. The First Appellate Court reversed

³ See Appendix A for duties and responsibilities of the LEA

that decision in March 2012 saying the LEA was a legal entity distinct from the county and the BOS had no authority to approve or disapprove the project. By not ruling on the other issues brought forth by NO WETLANDS, the lawsuit was heard by Judge Duryee who ruled in favor of NO WETLANDS on December 11, 2012. RLI, joined by County Counsel, has filed an appeal.

If RLI is unsuccessful in overturning the ruling, the permit from 1995 will remain in force. What this means to the residents of Marin County is the following:

- The landfill may choose not to proceed with plans to build a methane gas-to-energy plant, which can substantially reduce current greenhouse gas admission and may provide enough electricity to power 6,000-8,000 Marin County homes.
- Under the 1995 permit, the landfill is allowed 19 million cubic yards; as of March 2012 the landfill had 2.2 million cubic yards remaining. At the current rate, RLI could be forced to close within seven to nine years, thus requiring Marin County solid waste to be trucked out of county and increasing rather than reducing our carbon footprint and making our waste some other county's problem.
- According to County officials, siting a new landfill in Marin will be impossible.

Marin's Diversion Rate

In 2008, SB 1016 was enacted to make the process for measuring disposal compliance simpler by changing from a diversion-based indicator to a per capita disposal rate (with 50 percent of generation as the goal). For 2007, the JPA had a disposal target of 7.6 pounds per person per day. The actual result was 4.9 pounds. This is the equivalent of 68 percent diversion. For 2011, the result was 3.8 pounds, or the equivalent of 75 percent diversion. The JPA's stated goal was to achieve 80 percent diversion by 2012 and reach zero waste by 2025.⁴ Essentially, zero waste means that approximately 94 percent of waste will be diverted, but that there will still be residual waste after diversion processing. While the size of the annual waste stream is decreasing due to recycling efforts and the recent downturn in the economy, there is just one landfill in Marin County and it may reach capacity and close as early as 2020 if the pending appeal is denied. Several actions, if taken, can extend the useful life of the landfill, namely: reduce the amount of waste deposited, increase the recycling rate, increase the allowed capacity of the fill area, and convert the materials at the fill into alternate forms (such as green waste into compost and methane into electricity).

There are some indications that the JPA goal of 80% diversion by 2012 might not have been achieved. If so, this failure may be due to all of the following:

- A planned residential food waste implementation took longer than expected due to a lack of regional composting facilities such as RLI

⁴ The 2012 actual results will be available in the JPA's Annual Report due in August.

- A planned joint project between Marin Sanitary Service and Central Marin Sanitation Agency for processing of commercial food scraps through anaerobic digestion to produce methane generated energy has been delayed
- The lack of other facilities for processing commercial food scraps - one potential facility being RLI
- The JPA's new Construction and Demolition (C&D) Ordinance has not been approved by all municipalities, and
- RLI has postponed its planned construction and demolition facility due to the lawsuit

The Grand Jury is concerned about the potential loss of the landfill and its ability to help Marin County achieve its desired 94% diversion rate. In addition, the potential loss of the proposed methane gas-to-energy plant means that we would lose the ability to provide renewable energy to 6,000-8,000 Marin County homes.

The purpose of this report is twofold: 1) Review the current diversion programs in place, and 2) examine ways of converting waste to energy that might help the County achieve zero waste by utilizing the remaining 6 percent residual, thus reducing stored waste and extending the life of the landfill.

APPROACH

The Grand Jury began its investigation by touring Redwood Landfill and conducting interviews with RLI, County Counsel, the LEA, and the JPA. In these interviews, we discussed the pending appeal, the impact if the appeal is not granted, the tonnage currently going to RLI and the possible alternatives if the appeal is denied. In addition, we interviewed Marin Clean Energy to verify the viability of using methane gas-to-energy as a renewable energy source.

Following our initial interviews, we arranged a tour of the Marin Sanitary Service complex where we observed their current resource recovery operations and received information regarding their anaerobic digestion joint venture with Central Marin Sanitation Agency, which should be operational by early 2014. In addition to our interviews, we reviewed the 2008 EIR report, the 2008 PERMIT, the NO WETLANDS lawsuit and Judge Duryee's ruling. We reviewed articles on landfill use, waste-to-energy technologies, current and past Marin County waste tonnage reports and greenhouse gas emission standards.

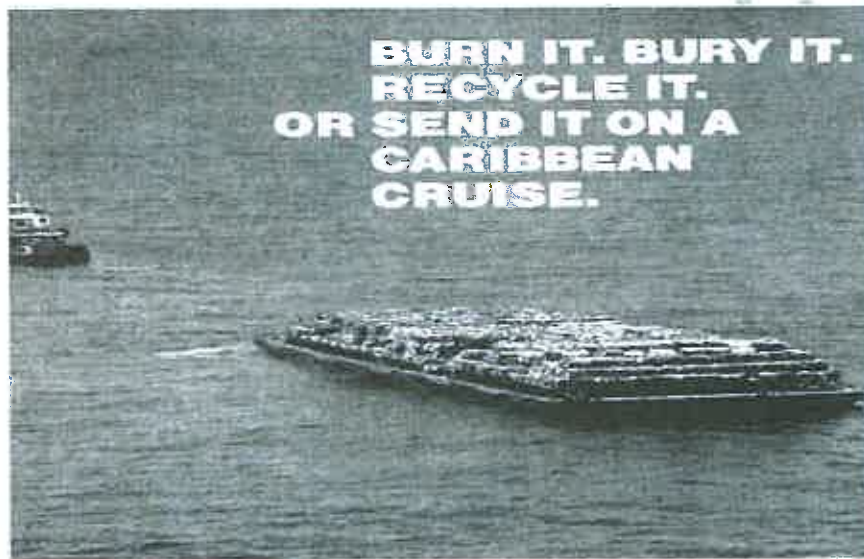
DISCUSSION

Trash is not a typical dinner party topic. Dumping the leftovers in the trashcan and placing it at the curb, or even having it conveniently picked up in the backyard by the friendly garbage man was a way of life for most Americans by the end of WWII. Who

cared where it ended up; it wasn't our collective problem. It was out of sight and no thought was given to the consequences of mounds of garbage growing in the local landfill.

A Short History of Garbage Disposal

The ZeroWasteMarin website states that for most of the first half of the twentieth century, as a nation, we recovered for reuse about 75 percent of the waste generated. In the 1970s that figure had dropped to 7.5 percent. Concerns were raised about landfill shortages. The 1987 "garbage barge", which left Long Island, New York in search of a final disposal site, became a rallying cry that shifted the national focus to Municipal Solid Waste (MSW) management.



The Islip, N.Y., garbage barge spent much of Spring, 1987 toting 3,128 tons of smelly refuse from state to state and country to country. The town's dump was full, and Florida, North Carolina, Alabama, Mississippi, Louisiana, Texas, Mexico, Belize and the Bahamas refused to take delivery.⁵

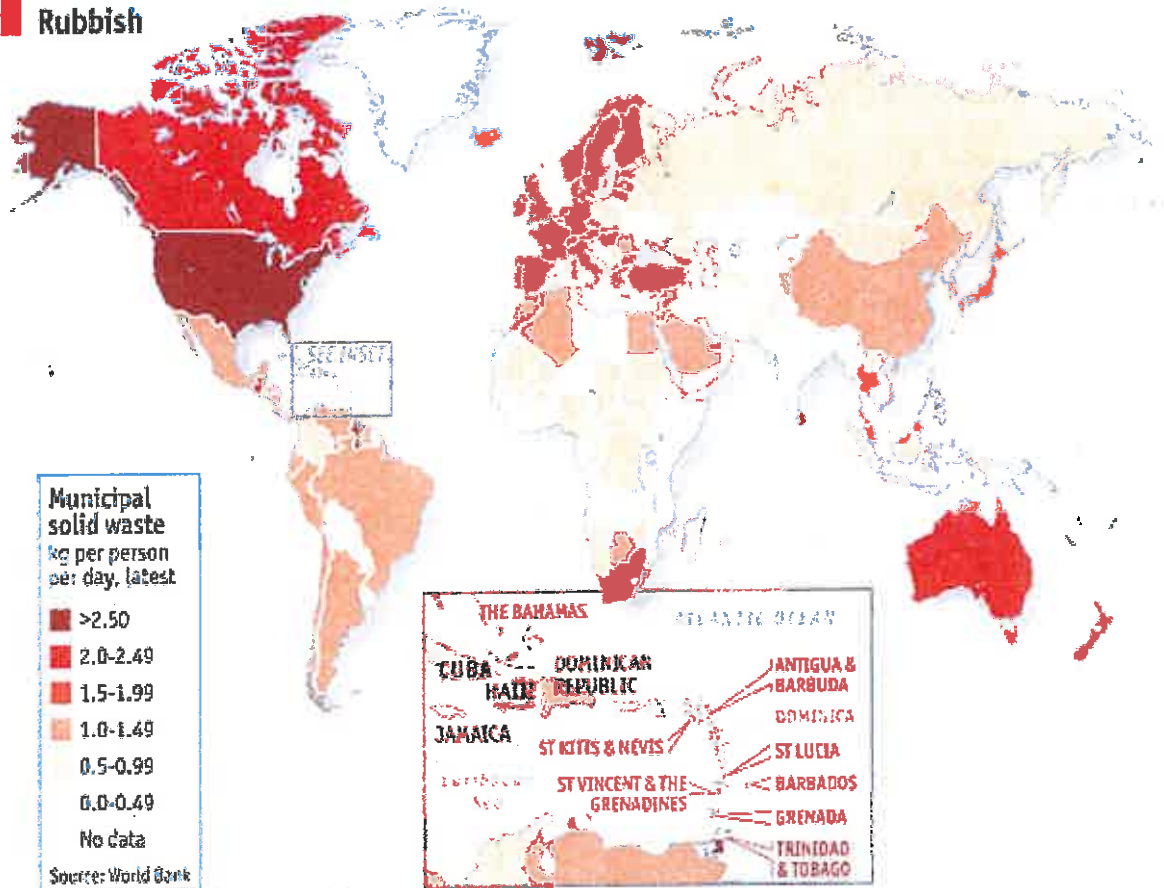
In his book, Garbology, Our Dirty Love Affair with Trash, Edward Humes says "*Americans make more trash than anyone else on the planet, throwing away about 7.1 pounds per person per day, 365 days a year.*⁶ *Across a lifetime that rate means, on average, we are each on track to generate 102 tons of trash. Each of our bodies may occupy only one cemetery plot when we are done with this world, but a single person's 102-ton trash legacy will require the equivalent of 1,100 graves.*"

⁵ http://articles.orlandosentinel.com/1990-07-29/news/9007290361_1_barge-garbage-islip

⁶ "This calculation is derived from the most recent and most accurate data on America's annual municipal waste generation, the biannual study by Columbia University and the journal BioCycle, which put the nation's trash total at 389.5 million tons in 2008. The population of the country was put at 301 million that year by the U.S. Census, which yields a daily waste generation amount of 7.1 pounds per day."

Humes goes on to state, “Americans have ‘won’ the world trash derby without really trying, making 50 percent more garbage per person than other Western economies with similar standards of living (Germany, Austria and Denmark, among others), and about double the trash output of the Japanese.”

Rubbish



The Rubbish Map– Jun 7th 2012, 15:51 by The Economist online

A more recent calculation in 2012, illustrated above by The Economist, would put the U.S. at 5.5 pound per person per day, a reduction of 1.6 pounds since 2008. As discussed in the Background section above, Marin County has achieved a much greater reduction than the national average, showing 3.8 pounds per person for 2011.⁷ Several factors contributed to the changes in volume of trash headed to landfills:

- Prior to about 1960, Garbage haulers were known as scavengers because they sorted through the trash and removed bottles, cans, rags, etc. for recycling. With

⁷ This calculation is based on JPA data using 2011 Marin County population of 253,512 and 175,810 tons of Marin County waste equaling 0.6935 tons equaling 1,387 pounds per person per year, or 3.8 pounds per person per day.

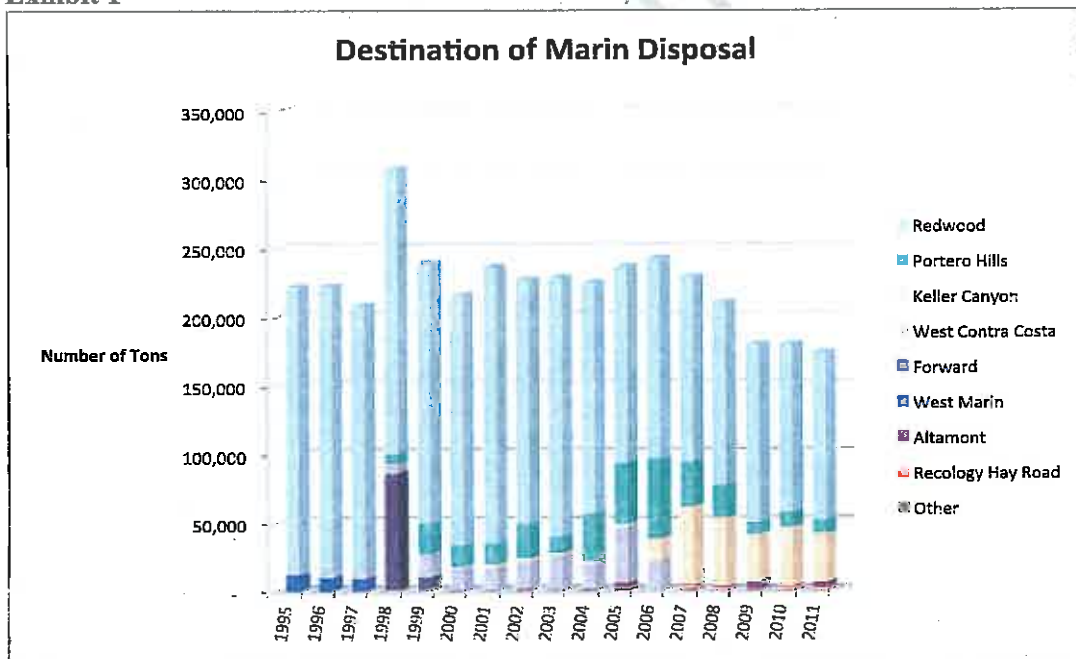
the advent of the compacting garbage truck, this was no longer possible, and everything ended up in the landfill.

- As a result of The Clean Air Act of 1970, the backyard incinerator was banned.

Marin County's awareness of the need to divert tonnage going to the landfill began even before the advent of AB 939 in 1989. Curbside recycling was instituted in the mid-'80's with bottles, cans, paper and cardboard, then progressed to green waste and household food waste and now, mandatory commercial recycling,⁸ including commercial food waste.

A certain amount of the reduction in waste tonnage can be attributed to the recent economic downturn. However, the Marin JPA's policies and procedures, outlined in a 2009 Zero Waste Feasibility Study, prepared by R3 Consulting Group, have set the County on a course for reaching the desired 94% recovery rate. Exhibit 1 illustrates the 27% decline in Marin County tons disposed between 1995 through 2011. Destination of disposal is determined by the landfill contracts negotiated by the local haulers. Most of Southern Marin's waste is taken to out-of-county landfills.

Exhibit 1



California Department of Resources Recycling and Recovery (CalRecycle)
Disposal Reporting System (DRS)

⁸ "With the passage of Assembly Bill (AB) 341, businesses and public entities that generate four cubic yards or more of waste per week and multifamily units of five or more are required to recycle. Businesses are required to recycle on and after July 1, 2012."

Determining Landfill Life

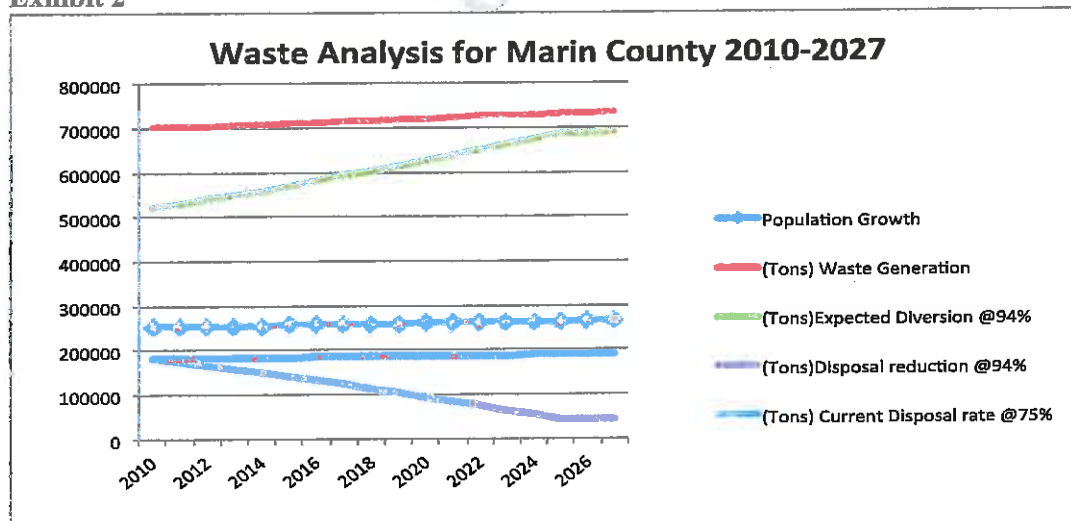
Of major concern to the JPA is the potential impact if the pending appeal of the NO WETLANDS lawsuit is denied and RLI has to revert to its 1995 PERMIT. The JPA, along with the LEA, monitors the anticipated "site life" of the landfill as part of statutory and regulatory requirements.⁹ One requirement is the siting of a new landfill if there is less than 15 years of site life.

As of March 2012, under the 1995 PERMIT, RLI has available capacity for another 2.2 million cubic yards (CY). Between April 2011 and March 2012 RLI took in 263,000 CY, or about 231,500 tons of Municipal Solid Waste (MSW), meaning that at the current rate, which is one-half of their allowed yearly capacity, the landfill will reach capacity in 2020-2022, or a little more than 7-9 years from now. This means that the County would need to immediately look for alternate disposal sites.

The JPA retained Environmental Science Associates (ESA) to prepare an analysis of the landfill's site life in 2012. Their analysis, based on the 2008 PERMIT, and the County's achievement of 94% diversion rate by 2025, concluded that there would be 3.1 million tons or 3.5 million CY of capacity remaining in RLI by 2027 (15 years).¹⁰

In the study prepared by ESA, many factors were used to determine the landfill closure scenarios, including expected population growth, waste generation, diversion at expected 94%, disposal reduction at 94% diversion and disposal at current 75% diversion. Exhibit 2 illustrates the expected results.

Exhibit 2

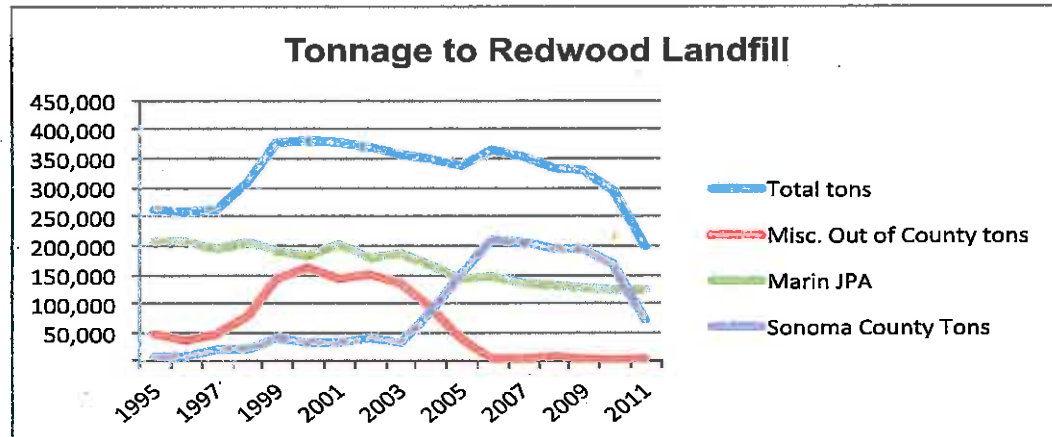


Prepared by ESA for the Marin County Hazardous and Solid Waste Management Joint Powers Authority 2/09/12

⁹ PRC Sections 41700-41721.5 and 14CCR Section 18755-18756.7 -See Appendix B

¹⁰ County Counsel has advised the JPA that RLI should operate under the 2008 PERMIT until the appeal is heard.

Since early 2000, the total tonnage going to RLI has diminished, particularly during recent years. As shown in Exhibit 3 below, there was a spike in disposal at RLI in 2005 when the Sonoma County Landfill reached capacity. In 2011, the Sonoma County landfill reopened, reducing the MSW going to RLI.

Exhibit 3

California Department of Resources Recycling and Recovery (CalRecycle)
Disposal Reporting System (DRS)

Note: above chart excludes "Alternate Daily Cover" (ADC), which amounted to 31,234 tons in 2011

If RLI prevails in the appeal, the allowable capacity under the 2008 PERMIT would leave nearly 9.3 million CY of capacity or a closure date of approximately 2049, based on the current rate of disposal. If the landfill's maximum fill rate is attained each year, then the landfill would reach capacity in 2032.

Exhibit 4 represents the year the maximum landfill capacity will be reached under the 1995 permit and under the 2008 permit with three scenarios: 1) maximum allowed fill rate per year, 2) current fill rate per year, and 3) fill rate if 94% diversion is attained.

What the Exhibit clearly illustrates is that our one landfill, despite all interventions, has a finite life, based on its current usage.

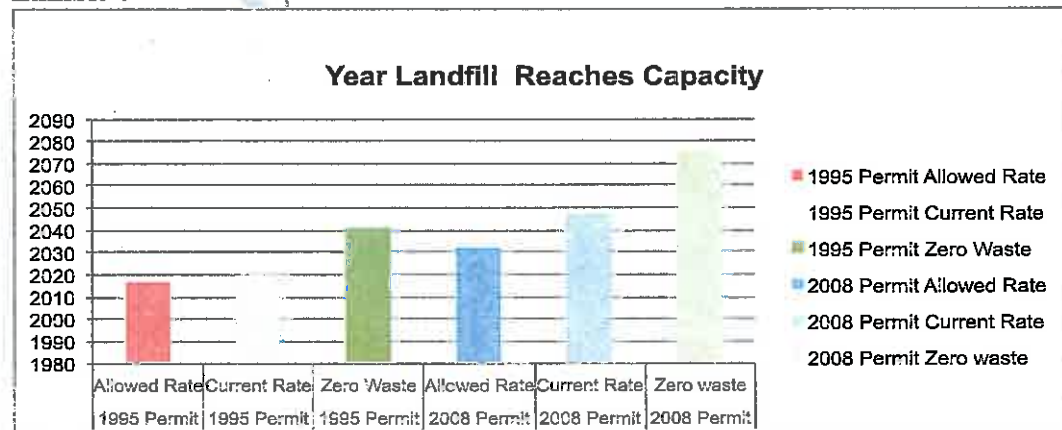
Exhibit 4

Table prepared from data shown in the ESA study and Redwood landfill statistics

Comparing 1995 PERMIT vs. 2008 PERMIT

In 2003, 180 acres of the original 600-acre site were restored to wetland status in partnership with the Marin Audubon Society. The 1995 PERMIT permitted footprint covers 210 acres of the remaining 420 acres and limits the total landfill capacity to 19,000,000 CY, which will be reached within the next 7-9 years at current rates. Of major concern to the NO WETLANDS group is the fact that the Petaluma River Estuary and Marsh surround the landfill on three sides. Although RLI has made significant improvements to levees to control leachate,¹¹ NO WETLANDS believes there is still a major threat of leakage into the estuary if there is a 100-year flood or an earthquake.¹² The 1995 PERMIT does not address waste diversion programs, which RLI wants to implement, nor does it address the issues raised by NO WETLANDS.

The 2008 PERMIT expands the capacity to 26,077,000 CY and limits the permitted area to 222.5 acres for disposal and 7 acres for composting. Extending the slope of the landfill mound (see illustration below) rather than adding to the footprint while maintaining the current maximum elevation will achieve the pertinent disposal expansion requirements.



As stated previously, over 10 years were spent developing the 2008 PERMIT with many adjustments and concessions on the part of RLI. The LEA's requested changes to the permit request, - "Mitigated Alternatives", are outlined in the 2008 approved EIR¹³.

¹¹ **Leachate** is any liquid that, in passing through matter, extracts solutes, suspended solids or any other component of the material through which it has passed. Leachate is a widely used term in the [environmental sciences](http://en.wikipedia.org/wiki/Leachate) where it has the specific meaning of a liquid that has dissolved or entrained environmentally harmful substances, which may then enter the environment. It is most commonly used in the context of land-filling of putrescible or industrial waste. <http://en.wikipedia.org/wiki/Leachate>

¹² Bruce Baum, Chairman of No Wetlands Landfill Expansion's board of directors, said, "Our concerns continue around the lack of a liner and inadequate levees."

Marin judge finalizes ruling voiding new permit for Redwood Landfill *Richard Halstead Marin Independent Journal*

¹³ The fundamental basis for the Mitigated Alternative is stated in the description of this alternative on page 5-31 of the FEIR: [Under the Mitigated Alternative,] Redwood Landfill would shift its emphasis from waste disposal to material and energy recovery. Instead of placing emphasis on increasing waste disposal capacity, Redwood Landfill would develop processes and methods aimed at increasing diversion of materials from landfill, and increasing energy production at the site. This would result in several benefits, including preservation of landfill capacity; increasing diversion and reducing landfilling of wastes in this environmentally sensitive location; reducing the need for certain project mitigation measures described in the analysis; providing justification for Overriding Considerations for significant unavoidable impacts of the project; helping to counterbalance or avoid altogether the significant unavoidable effects of the proposed project; maximizing consistency with County Integrated Waste Management Plan policies and County energy policies; and providing long-term protection of the environment in accordance with California Public Resources Code (PRC) § 440127.

Looking at the Global Warming Potential - Net Emissions less offset, the mitigations result in a reduction of nearly 2.2 million Mg eCO₂ (greenhouse gas emissions) or a reduction of 33.4 % between 1998 through 2098.¹⁴ It should be noted that when the landfill does reach capacity and is closed, RLI is required to maintain the site for at least 30 additional years and must set aside funds for the post-closure maintenance, which includes monitoring greenhouse gas emissions. The Mitigated Alternatives also meet the requirements of the Marin County Greenhouse Gas Reduction Plan - October 2006.

The final EIR dated March 2008, including responses to comments, contains 558 pages. The report includes in-depth discussions of greenhouse gas emissions, leachate control, traffic, landfill slope, and revised flood mitigation.

In the December 11, 2012 Superior Court ruling, Judge Duryee found that the 2008 EIR inadequately discussed the following:

- Cumulative effect of the Project's greenhouse gas emissions.
- The possible increased *non-cancer* health impacts from air pollutant emissions.
- Mitigation measures to reduce the impact to the Project from potential flooding and groundwater contamination.
- An alternate off-site location.

The following is taken from Will Landfill Expansion be Scrapped? Dated December 20, 2012 in the Pacific Sun, "Rebecca Ng, deputy director of county environmental health services and the county's solid waste supervisor, says the lawsuit is the cause of stopping many protections from going into effect. In her role with environmental health services, she is the head of the LEA. The environmental report includes '60 pages plus of mitigation measures' that will not go into effect if the report gets tossed and the permit rescinded. With Judge Duryee's ruling, says Ng, the landfill will fall back to its 1995 solid-waste facilities permit. And the mitigation measures targeting greenhouse gas emissions, building a resource recovery center and a gas-to-energy plant also will fall away. 'We think the solid waste facilities permit that was issued in 2008 is far superior in terms of protecting the environment.' Ng says the county is trying to get those projects through a separate environmental review track so they might proceed."

A February 15, 2013 article in the Petaluma Patch entitled Landfill at Edge of Bay Pits Environmentalists against Waste Hauler, states:

"Waste Management has appealed the ruling and says opponents simply want to export their garbage out of the area.

'This is a highly regulated site with a lot of reporting and a lot of verification going on every single day,' said Osha Meserve, an attorney representing Waste Management. 'The

¹⁴ Mg=Million grams (1 million grams=1 metric ton) eCO₂= carbon dioxide equivalent

fears that have been expressed by the petitioners are just that, they are not founded on any fact and we think they are probably based more on NIMBYism in that they would rather see their waste go to other locations than keep the waste locally.'

The landfill is working to bring down its greenhouse gas emissions to pre-1990 standards and has two levees that can be raised as needed, according to Meserve. And there is no alternate site for the garbage, meaning it would have to be trucked to another county, increasing emissions and possibly rates.

Dan North is the district manager at Redwood and says the landfill has worked hard to create an operation tailored to the green future Marin leaders have envisioned. 'The county has set forth a zero waste goal by 2025 and we need to support that goal,' he said. 'So it's not just about the expansion of the landfill, which is a service that is demanded by our customers, but it's also augmenting it with more recycling and more diversion.'

But opponents insist another site be found. They say Waste Management has plans to take in garbage from beyond Marin and Sonoma counties and is luring business by keeping prices low. They also point out that the landfill is surrounded by levees on three sides and that there are former stream channels underneath that make it easy for groundwater to get contaminated during high tides.

'Plenty of Marin County residents drive Priuses and profess to be environmentalists,' said Brent Newell, the attorney for the group opposing the expansion. 'There is no reason they shouldn't support to pay a couple of dollars more for the proper handling of their garbage.'"

The Grand Jury is not in a position to argue for or against the ruling. However, we do believe that Marin County citizens should be responsible for their own waste and not haul it to a landfill outside of Marin, thereby making it another county's problem.

There are three very critical aspects to the issue:

1. If the appeal is lost, RLI could close the landfill when it reaches its 1995 PERMIT capacity.
2. If RLI is nearing the 1995 PERMIT capacity, RLI may feel that they will not recover the costs of their proposed resource recovery capital expenditures. If no further 2008 PERMIT capital expenditures are made:
 - Marin loses the opportunity to have a WTE plant and RLI will simply continue to flare the landfill methane
 - Marin may lose expanded composting operations, which would change from the current windrow composting operation to Covered Aerated Static Pile (CASP) Composting. A CASP is designed to reduce methane production and volatile organic compound emissions as much as possible. This process could

achieve up to an 80% reduction in emissions when compared to the current process

- RLI will not build a proposed Reuse Center (Reusable items diverted from the scale house to charity)
 - A C&D recovery operation may be lost
3. Marin's carbon footprint will increase and rates may also be raised if our waste is hauled to more distant landfills.

All of the above remains unknown until the outcome of the appeal is heard sometime next year, and until we know RLI's response if the appeal is denied. The Grand Jury hopes that RLI will continue to enhance its operations in Marin County regardless of the outcome.

Successful Diversion Alternatives

What we do know is that a currently operating landfill gas-to-energy plant is successful. The Ox Mountain Landfill in Half Moon Bay is one of California's largest renewable energy projects having a landfill gas-to-energy station that is supplying 11% of the energy needs for the City of Alameda and is projected to supply 4% of the energy needs of Palo Alto.¹⁵ We also know that Marin Clean Energy would be very willing to purchase the energy output from RLI's proposed landfill gas-to-energy project at appropriate financial terms, which can provide renewable energy to at least 6,000 Marin County homes.

Marin County has had an exemplary record for achieving waste diversion from the landfill - reaching 75% diversion in 2011 and the expectation of reaching 80% at the end of 2012. The JPA has promoted many new programs to enhance recovery in an effort to meet or exceed the stated goal of 94% diversion by 2025. These include not only the recovery of household food waste, but now mandatory commercial recycling, including commercial food waste.

A 2009 Zero Waste Feasibility Study, prepared by R3 Consulting Group, recommended that the *"Down-stream programs include increasing the types of materials collected by haulers (e.g., food), revising franchise agreements and ordinances to reflect industry standards and establish waste reduction and diversion requirements, implement food waste digestion and composting, etc.... Approximately 56 percent or 128,000 tons of food, yard, organic waste, inerts, and mixed C&D were disposed at landfill. In order to meet the Zero Waste Goals, reduction and processing of these targeted materials is critical. However, currently there is insufficient capacity for the facilities located within the County to process these materials and it may be necessary to transport these materials to out-of-county facilities."*

¹⁵ <http://www.environmentalistseveryday.org/solid-waste-management/green-waste-industry-professionals/Alameda-housing.php>

Exhibit 5 breaks out the various components of waste disposed by percentages.

Exhibit 5

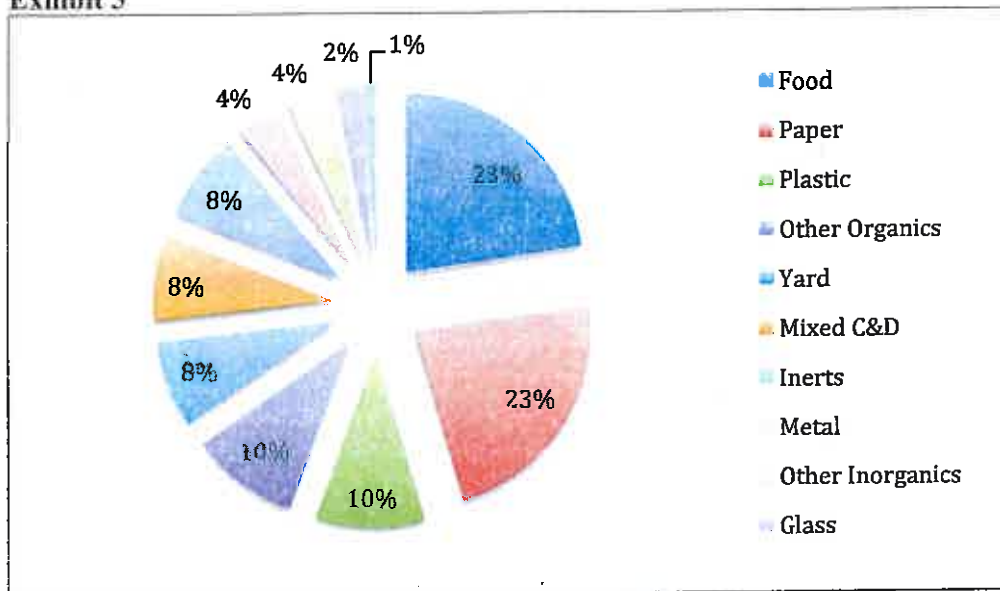


Figure ES-1-Materials Disposed- 2009 Zero Waste Feasibility Study

In addition to the potential for providing sustainable methane gas-to-energy for approximately 6,000-8,000 homes, RLI can play a vital role in helping to achieve the diversion goal if they continue with plans for an expanded composting operation, complete a C & D processing line, and possibly install an anaerobic digestion system to convert food waste to energy.

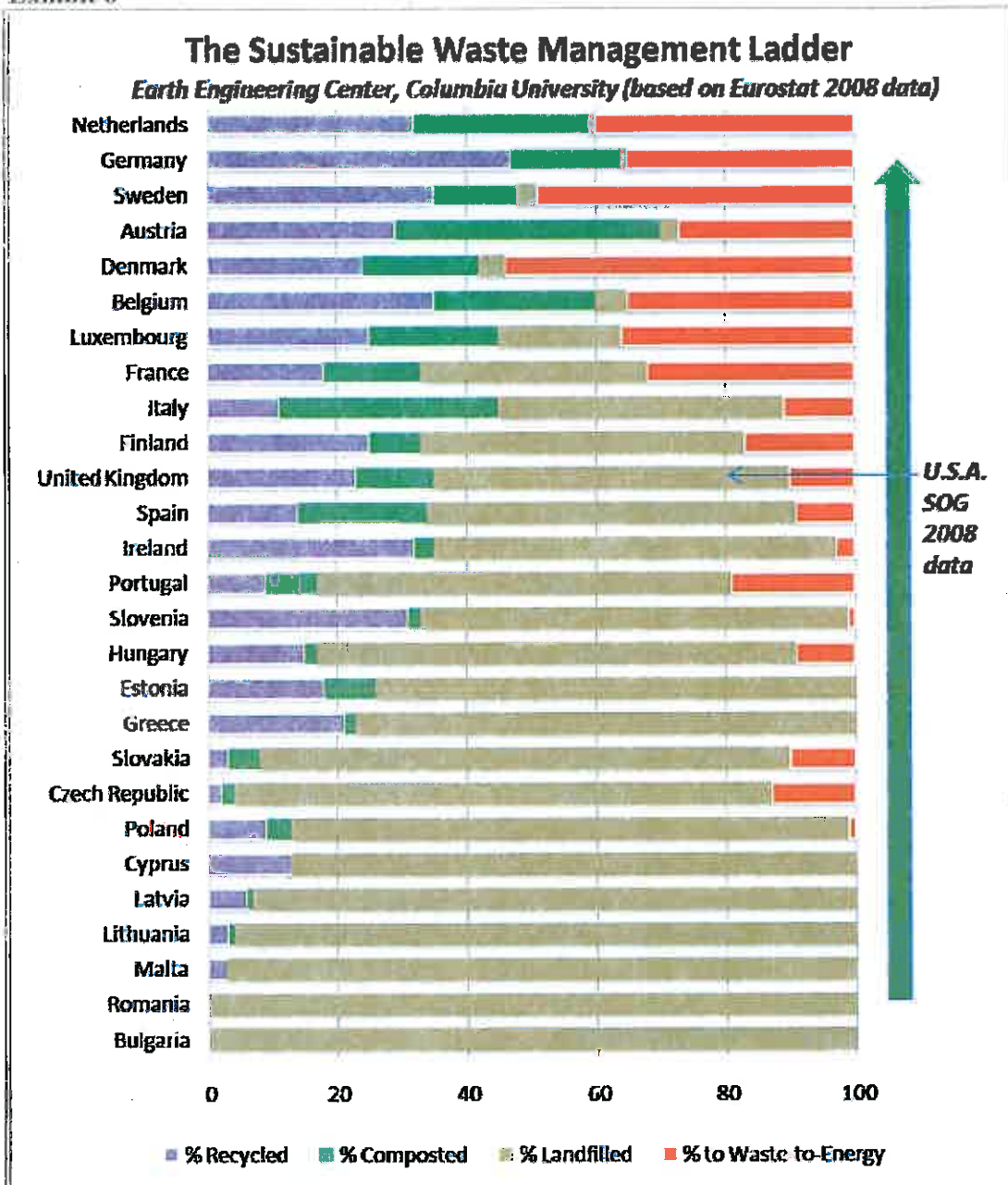
The JPA has encouraged and endorsed the Marin Sanitary Service/ Central Marin Sanitation District's Anaerobic Digestion system, called the Food to Energy (F2E) program. This program is designed to divert commercial food waste but may be expanded to include residential food waste once the public has accepted the concept. (See Appendix C)

Further Diversion Alternatives

To understand further diversion possibilities, the Grand Jury has researched methods used in other countries, which include forms of waste incineration or plasma gasification of waste. There are many dissenters when the word "incineration" is used because the immediate vision is of smoke stacks spewing a toxic stew into the atmosphere. Another argument against this approach is that people will simply not recycle if given this option.

However, that is not necessarily the case. Exhibit 6 illustrates that many countries with substantial waste to energy programs, nevertheless continue to recycle a substantial portion of their waste.

Exhibit 6



The United States is about on par with the United Kingdom according to the above diagram. The Netherlands and Germany lead the way with less than 2% of their waste being landfilled. Denmark is highly advanced in its use of waste for energy. Using Copenhagen as an example, Edward Humes states,¹⁶ *"This city recycles trash at twice the U.S. average, its residents create less than half the household waste per capita, and the community philosophy holds that dealing with and solving the problem of trash must be a*

¹⁶ Excerpt From: Humes, Edward. "Garbology." Avery, 2012-04-19. iBooks.

local concern, even a neighborhood concern. When it comes to waste, NIMBY (Not in My Backyard) is not a factor, as shipping trash off to some distant landfill—making it disappear for others to manage—is considered wasteful, costly and immoral. Not that such out-of-sight, out-of-mind garbage treatment is much of a consideration here: only 3 to 4 percent of this city's waste ends up in landfills, compared to the U.S. average of 69 percent....And the secret sauce for that city and the entire nation of Denmark, at least on the waste disposal front, is its mastery of turning trash into a renewable energy source.

'They are the model, along with Japan and a number of other countries in Europe,' says Nickolas Themelis of Columbia University, America's engineer-apostle of the untapped power of garbage. 'They put these waste-to-energy plants right in their neighborhoods. They become part of the fabric of the community. There's none of the fear and misinformation about waste energy that we have in the U.S. They are clean and efficient, and many of them are quite attractive. The people are proud of them.' Denmark's strategy has been to build trash-burning, power-generating plants on a relatively small scale. No behemoths burning 2,000, 5,000 or 10,000 tons of garbage a day, such as those proposed for Los Angeles in the seventies and eighties.'

Humes continues his argument that burning does not diminish recycling by stating *"The cities and nations that have made trash burning a key part of their energy and waste strategies—Denmark, Germany, Austria, Japan, the Netherlands—all have robust recycling programs that not only recycle as much as or more than the amount of trash that is burned, but they all also recycle at a much higher percentage than the U.S. has been able to accomplish. It's the landfilling that diminishes when waste-to-energy becomes a strong option, not recycling. Germany, for instance, burns 34 percent of its municipal waste and it recycles the rest, an impressive 66 percent. That's not just one super-green city, like San Francisco, but an entire country of 82 million people, the powerhouse economy of Europe. Almost none of its municipal waste gets landfilled."*

Most WTE opponents assume that only massive, expensive, utility-scale trash power plants can be used to produce energy. Currently there are 86 facilities in the United States for the combustion of MSW, all of which were built prior to 1995.¹⁷ There are three WTE plants in California. Two are in Southern California; Long Beach and Commerce, and the other is in Stanislaus County. The Stanislaus Resource Recovery Facility began commercial operation in January 1989. This Waste-to-Energy facility, operating as Covanta Stanislaus, processes 800 tons per day of solid waste, which generates up to 22.5 megawatts of renewable energy that is sold to Pacific Gas and Electric Company.¹⁸ But the less costly, community-based plants that Denmark is using are the most successful use of the WTE technology right now. For a description of the various forms of WTE technologies please refer to Appendix D.

Once the energy crisis of the 1980s was resolved in the United States, the public lost interest in the WTE technology. Interest has been revived as landfills reach capacity and newer methods of extracting energy from waste are being developed. One of the most

¹⁷ Energy Recovery from Waste/Municipal Solid Waste/ US EPA

¹⁸ <http://www.covantaenergy.com/en/facilities/facility-by-location/stanislaus.aspx>

promising is Plasma Gasification, which contains the waste in a sealed container, thus limiting environmental exposure. Please see Appendix E for a description of one form of Plasma Gasification. Other methods are being developed including Microwave Plasma Gasification.¹⁹ While these methods are still very expensive due to development costs, once the technology is perfected, and demand increases, costs will decrease and they will become viable alternatives to waste disposal.

Waste Management - owner of RLI - is well aware that as the newer waste diversion techniques become increasingly more affordable, landfills will become a thing of the past, and in their 2012 Sustainability report, C.E.O. David P. Steiner wrote: " *We are committed to finding the 'next big things' or even the small profitable things — that will relegate the landfill to the last resort for waste after all possible value has been extracted. We recognize that it takes time to develop the innovative technologies necessary to derive new uses for waste streams, and we are realistic about the challenge of finding the right innovations. That is why we have invested in a portfolio of more than 30 partnerships focused on alternative energy technologies. In this way, we function as venture capitalists for entrepreneurs looking for new ways to transform waste into useful products such as fuels and chemicals. As we work together, we gain insights from what fails as well as what succeeds*"

The Grand Jury urges the LEA, JPA, and the County Public Works Department to explore additional methods for keeping Marin County waste in the county including turning the 6% residual after diversion into energy and possibly achieve 100% landfill diversion. Our hope is that we will not have any Wasted Energy.

FINDINGS

- F1. Redwood Landfill's 2008 EIR is being challenged in court, thereby jeopardizing its 2008 Solid Waste Facility Permit, which has delayed the construction of the methane gas-to-energy plant and the Construction and Demolition sort line.
- F2. Redwood Landfill, as currently permitted, has a finite life and therefore, alternate methods of waste diversion need to be explored.
- F3. Waste-to-Energy Plants can be a solution to limited landfill space.
- F4. A portion of Marin County MSW is being sent to out-of-county landfills, increasing our carbon footprint and making our waste another county's problem.
- F5. Marin County waste disposal has diminished by over 27% since 1995 due to the passage of AB 939 in 1989 and public awareness.
- F6. Redwood Landfill has seen a waste reduction of 24% during the same time period as a result of less out-of-county disposal in the Marin landfill and the effects of diversion awareness.

¹⁹ <http://www.waste-management-world.com/articles/print/volume-12/issue-6/features/microwave-plasma-gasification-heats-up-in-the-us.html>

- F7. CalRecycle statistics prove that waste diversion in Marin County is much higher than the national average due to concerted efforts by the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and local waste haulers to educate the public.

RECOMMENDATIONS

- R1. The Grand Jury recommends that the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and Local Enforcement Agency (LEA) meet with Redwood Landfill as soon as feasibly possible to gain assurances that the landfill methane gas-to-energy plant will become a reality.
- R2. The Grand Jury recommends that the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and Local Enforcement Agency (LEA) ensure that Redwood Landfill completes the Construction and Demolition sort line.
- R3. The Grand Jury recommends that the Marin County Public Works Department, Local Enforcement Agency (LEA) and Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) work with Redwood Landfill to ensure the building of an anaerobic digester for food waste, the energy from which can be added to the methane gas-to-energy plant.
- R4. The Grand Jury recommends that the Marin County Public Works Department, Local Enforcement Agency (LEA) and Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) work with Redwood Landfill to explore all options for minimizing future disposal through some cost effective, least polluting form of waste gasification, such as Microwave Plasma Gasification.
- R5. The Grand Jury recommends that Local Jurisdictions holding MSW franchise agreements mandate, through revisions to the agreements, that haulers dispose of all MSW generated in Marin County in Marin County.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following individuals:

- Operations Manager, Redwood Landfill Inc. to Findings F1-F4 and F6 and all Recommendations.
- Deputy Director, Environmental Health Services-Community Development Environmental Health Services Administration to Findings F1-F6 and all Recommendations.
- Director, Department of Public Works, to Findings F1-F4 and Recommendations R3 & R4.
- Deputy Director, Department of Public Works - Waste Management to All Findings and Recommendations.

- Program Manager Department of Public Works-Waste Management Division to All Findings and Recommendations.

From the following governing bodies:

- The Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) to all Findings and Recommendations.
- County Counsel to Finding F1 and Recommendation R4 & R5
- Board of Supervisors to Finding F2-F4 and all Recommendations
- Marin Energy Authority to Recommendations R 1, R3 & R4
- The City Council, City of San Rafael to Recommendation R 5
- The Town Council, Town of Ross to Recommendation R 5
- The City Council, City of Larkspur to Recommendation R 5
- The City Council, City of Sausalito to Recommendation R 5
- The Town Council, Town of Tiburon to Recommendation R 5
- The City Council, City of Belvedere to Recommendation R 5
- The City Council, City of Novato to Recommendation R 5
- The Town Council, Town of Corte Madera to Recommendation R 5
- The City Council, City of Mill Valley to Recommendation R 5
- The Town Council, Town of San Anselmo to Recommendation R 5
- The Town Council, Town of Fairfax to Recommendation R 5

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

- County of Marin Greenhouse Gas Reduction Plan, October 2006
- Energy Recovery from Waste/Municipal Solid Waste/ US EPA
- *Final Draft Zero Waste Feasibility Study* Presented by R3 Consulting Group December 2009
- Halstead, Richard. *Marin judge finalizes ruling voiding new permit for Redwood Landfill* Marin Independent Journal December 20, 2012
- Humes, Edward. *Garbology, Our Dirty Love Affair with Trash*, Avery, 2012-04-19
- <http://www.calrecycle.ca.gov/archive/IWMBPR/2008/December/54.htm>

- <http://www.covantaenergy.com/en/facilities/facility-by-location/stanislaus.aspx>
- <http://www.environmentalistseveryday.org/solid-waste-management/green-waste-industry-professionals/Alameda-housing.php>
- <http://www.nytimes.com/2012/09/11/science/plasma-gasification-raises-hopes-of-clean-energy-from-garbage.html>
- <http://www.waste-management-world.com/articles/print/volume-12/issue-6/features/microwave-plasma-gasification-heats-up-in-the-us.html>
- *Is It Better To Burn or Bury Waste for Clean Electricity Generation?* P. Ozge Kaplan, Joseph DeCarolis, and Susan Thorneloe VOL. 43, NO. 6, 2009 / ENVIRONMENTAL SCIENCE & TECHNOLOGY 9 1711
- *Landfill at Edge of Bay Pits Environmentalists against Waste Hauler, Petaluma Patch*, February 15, 2013.
- No Wetlands Landfill Expansion et al., vs. County of Marin et al.- First Appellate Court District Division Four #A131651 filed 3/20/12
- No Wetlands Landfill Expansion et al., vs. County of Marin et al.- Superior Court of Marin, Case No: CV090198 RULING 12/11/12
- *Per Capita Disposal and Goal Measurement (2007 and Later)*- <http://www.calrecycle.ca.gov/lgcentral/Basics/PerCapitaDsp.htm>
- Redwood Landfill, Solid Waste Facility Permit: December 18, 2008
- Redwood Landfill Final Environmental Impact Report – Response to Comments Amendment ESA/ March 2008
- Siedman, Peter. *Will Landfill Expansion be Scrapped?* *Pacific Sun*, December 20, 2012
- The History of the California Environmental Protection Agency- <http://www.calepa.ca.gov/about/history01/ciwmb.htm>
- *The State of Garbage in America*, *BioCycle*, October, 2010
- <http://zerowastemarin.org/the-2025-goal/our-mission/>

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

GLOSSARY

C & D - Construction and Demolition

CY - Cubic Yard

EIR-Environmental Impact Report

EPA- Environmental Protection Agency

ESA - Environmental Science Associates

LEA – Local Enforcement Agency (See Appendix A for full definition)

JPA – Marin Hazardous and Solid Waste JPA (Joint Powers Authority)

MSW – Municipal Solid Waste

PERMIT – Solid Waste Facility Permit

RLI – Redwood Landfill Inc.

WM – Waste Management Inc.

WTE- WASTE-TO-ENERGY

APPENDIX A

Solid Waste Local Enforcement Agency (LEA) Duties and Responsibilities of the LEA

Summary of Duties and Responsibilities specific to the Marin County LEA

1. Routine Landfill Inspections
There are two landfills in Marin County, which are inspected at least monthly.
2. Routine Transfer Station/Materials Recovery Facility Inspections
Marin Sanitary Service's transfer station and resource recovery building are inspected monthly.
3. Closed Landfill Inspection
The LEA is required by current regulations to perform quarterly inspections at the 14 closed landfills in Marin County
4. Abandoned Site Inspections
Abandoned sites are required to be inspected quarterly. There are no known abandoned sites in Marin County.
5. Illegal Site Inspections
The LEA is responsible for investigation of alleged illegal dumping sites. Confirmed illegal sites are required by regulation to be inspected monthly depending abatement by enforcement action. Currently, there is one known illegal site, which has been referred to the County Counsel.
6. Compost Facility Inspections
The LEA performs monthly inspections of the Redwood Landfill Biosolids Compost Facility.
7. Sites Exempted Pursuant to 27 CCR 21565
Exempted sites shall be inspected quarterly. Currently no exemptions exist within Marin County.
8. Facility Complaint Inspections
If a complaint cannot be resolved off-site, the LEA will respond by inspection
9. Demonstration Projects
When a landfill operator proposes to use an alternative daily cover (ADC) for refuse not within one of the categories listed in 27 CCR 20690(b)(1-10), or an ADC material from one of the above categories, but used differently than specified in the aforementioned section, a site-specific demonstration project must be conducted. In such instances, the LEA may require that the project be subject to performance standards, as specified in 27 CCR 20695. Sites operating under performance standards are inspected by the LEA on a weekly basis.
10. Refuse Collection Vehicle Inspections
There are ten recognized refuse collection service operators in Marin County responsible for approximately 105 collection vehicles. The LEA performs annual inspections of each vehicle.

11. Non-Facility Complaint Inspections

Complaints regarding the storage, handling or disposal of solid waste at undeveloped properties, non-food related businesses, and residences other than multiple-family dwellings are investigated by the LEA.

12. Permits

The LEA evaluates, writes and processes new solid waste facility permits and revisions of existing permits in coordination with the CIWMB. New permits are required for facilities that have never operated, facilities which did not previously required a solid waste facility permit, or facilities with a new operator. After issuance, a permit is required to be reviewed every five years. This is also done by the LEA, in conjunction with the CIWMB.

A permit revision is required whenever a change in the design or operation of a facility is proposed that has potential for resulting in a physical change to the environment directly or ultimately. A revised permit must be reviewed by the LEA within five years of reassurance.

13. Permit Exemptions

The LEA reviews applications and documentation to determine if proposed solid waste facilities can be exempted pursuant to 27 CCR 21565. A staff report is generated and LEA staff facilitates a public hearing.

14. CEQA Process

The LEA reviews applications for solid waste facility permits or exemptions for completeness and accuracy. During the review, California Environmental Quality Act (CEQA) compliance must be assessed and if the project is not exempt, an Environmental Impact Report (EIR) may be required. In such cases, the LEA often acts as the lead agency for the EIR.

APPENDIX B

Siting Element References

Cal. Pub. Res. Code § 41701.

Each countywide siting element and revision thereto shall include, but is not limited to, all of the following:

- (a) A statement of goals and policies for the environmentally safe transformation or disposal of solid waste that cannot be reduced, recycled, or composted.
- (b) An estimate of the total transformation or disposal capacity in cubic yards that will be needed for a 15-year period to safely handle solid wastes generated with the county that cannot be reduced, recycled, or composted.
- (c) The remaining combined capacity of existing solid waste transformation or disposal facilities existing at the time of the preparation of the siting element, or revision thereto, in cubic yards and years.
- (d) The identification of an area or areas for the location of new solid waste transformation or disposal facilities, or the expansion of existing facilities, that are consistent with the applicable city or county general plan, if the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired.
- (e) For countywide elements submitted or revised on or after January 1, 2003, a description of the actions taken by the city or county to solicit public participation by the affected communities, including, but not limited to, minority and low-income populations.

Section 18744. Facility Capacity Component.

(a) For the initial SRRE the Solid Waste Facility Capacity Component shall identify and describe all existing permitted solid waste landfills and transformation facilities within the jurisdiction. This description shall contain the following:

- (1) identification of the owner and operator of each permitted solid waste disposal facility;
- (2) quantity and waste types of solid waste disposed;
- (3) permitted site acreage;
- (4) permitted capacity;
- (5) current disposal fees; and

(6) for solid waste landfills, remaining facility capacity in cubic yards and years.

(b) The Solid Waste Facility Capacity Component shall include a solid waste disposal facility needs projection which estimates the additional disposal capacity, in cubic yards per year, needed to accommodate anticipated solid waste generation within the jurisdiction for a 15-year period commencing in 1991.

(1) The solid waste disposal facility capacity needs projection for the initial SRRE shall be calculated based upon the solid waste generation projection conducted in accordance with section 18722, of Article 6.1 of this Chapter.

(2) The disposal capacity needs projection for the 15 year period shall be calculated using the following equation:

ADDITIONAL CAPACITY Year

$$n = [(G + I) - (D + TC + LF + E)] \text{Year } n$$

where:

G = The amount of solid waste projected to be generated in the jurisdiction;

I = The amount of solid waste which is expected to be imported to the jurisdiction for disposal in permitted solid waste disposal facilities through interjurisdictional agreement(s) with other cities or counties, or through agreements with solid waste enterprises, as defined in section 40193 of the Public Resources Code.

D = The amount diverted through successful implementation of proposed source reduction, recycling, and composting programs.

TC = The amount of volume reduction occurring through available, permitted transformation facilities.

LF = The amount of permitted solid waste disposal capacity which is available for disposal in the jurisdiction, of solid waste generated in the jurisdiction.

E = The amount of solid waste generated in the jurisdiction which is exported to solid waste disposal facilities through interjurisdictional agreement(s) with other cities, counties or states, or through agreements with solid waste enterprises, as defined in section 40193 of the Public Resources Code.

n = each year of a 15 year period commencing in 1991. [iterative in one year increments]

(c) The Solid Waste Facility Capacity Component shall include discussions of:

- (1) The solid waste disposal facilities within the jurisdiction which will be phased out or closed during the short-term and medium-term planning periods and the anticipated effect from such phase-out or closure on disposal capacity needs of the jurisdiction.
- (2) Plans to establish new or expanded facilities for the short-term and medium-term planning periods and the projected additional capacity of each new or expanded facility.
- (3) Plans to export waste to another jurisdiction for the short-term and medium-term planning periods and the projected additional capacity of proposed export agreements.

Note:

Authority cited:

Section 40502 of the Public Resources Code.

Reference:

Sections 41260, 41460 and 41821 of the Public Resources Code.

Section 18788. Five-Year Review and Revision of the Countywide or Regional Agency Integrated Waste Management Plan.

APPENDIX C

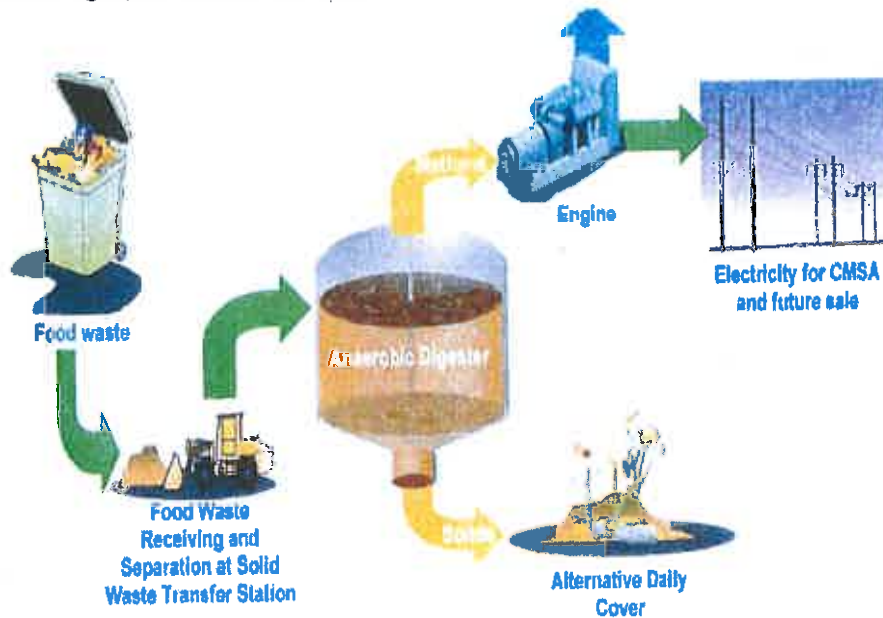


Central Marin Commercial Food-to- Energy (F2E) Program



What is Anaerobic Digestion?

Anaerobic digestion (also known as food-to-energy (F2E)) is the decomposition of organic solids in an oxygen-free environment. Through this technique, a natural biogas is created (consisting primarily of methane gas) which is captured and utilized as a source of renewable energy. By diverting food waste from landfills, fugitive green house gas (GHG) emissions are averted. Food waste is very biodegradable and has a much higher volatile solids destruction rate than biosolids. Therefore, residuals will only increase slightly and may be used as an alternative daily cover.



APPENDIX D

The follow describes the methods used to turn various types of waste into energy:

THERMAL TECHNOLOGIES

Gasification—uses heat, pressure and steam to convert organic or fossil-based materials directly into a gas composed mainly of carbon monoxide, hydrogen and carbon dioxide, otherwise known as syngas. Typical raw materials used in gasification are coal, petroleum-based and organic materials. The technology requires an energy source to generate heat and to begin processing. Hydrocarbon buildup, a main contributor to plant failures, is a significant problem. In addition, the cost of requirements to operate the plant has made it commercially unviable.

Microwave Plasma Gasification—plasmatron guns are strategically pointed to saturate matter with microwaves at an angle, creating an efficient vortex flow that starts the gasification process at the core, making this a more effective process. In addition, the microwave plasma gasification reactor does not react violently with any material as feedstock, and it is not as sensitive to moisture as other technologies are. For this and many other reasons, microwaves gasification can be considered as the leading emerging technology in the waste to energy field.²⁰

Pyrolysis—burns wet MSW in an oxygen and water free environment and generates substantial amounts of condensable hydrocarbons, which make operating the plant difficult and inefficient. The solids resulting from pyrolysis are highly contaminated and need further treatment. The additional process requires more energy than the original pyrolysis procedure.

Plasma Arc Gasification—uses electricity passed through graphite or carbon electrodes to convert organic materials to syngas; inorganic materials are converted to solid slag. Main disadvantages include large initial investment costs relative to current landfills, large electrical energy input, frequent maintenance of the highly corrosive plasma flame and highly toxic waste water. There are no tars or furans. At extremely high temperatures all metals become molten and flow out the bottom of the reactor. Inorganics such as silica, soil, concrete, glass, gravel, etc. are vitrified into glass and flow out the bottom of the reactor. There is no ash remaining to go back to a landfill –See Appendix E

Thermal Depolymerization—uses waste plastic, tires, wood pulp, medical waste, turkey offal and sewerage sludge to produce crude oil products as kerosene, naphtha and light crude oil. Methane, an additional byproduct, is collected and used to power turbine generators that produce electricity either for the facility or for resale.

²⁰ <http://www.linkedin.com/groups/Microwave-plasma-gasification-vs-other-1978778.S.95759190>

NON-THERMAL TECHNOLOGIES

Fermentation production—uses waste cellulose or organic material to create ethanol for use in motor vehicles. The fermentation process is the same general procedure used to make wine.

Esterification—uses recycled vegetable oil, virgin oil and/or tallow to create biodiesel. The recycled oil is processed to remove impurities and virgin oil is refined. The amount of oil in the feedstock and the transportation distance determine the effectiveness of the technology.

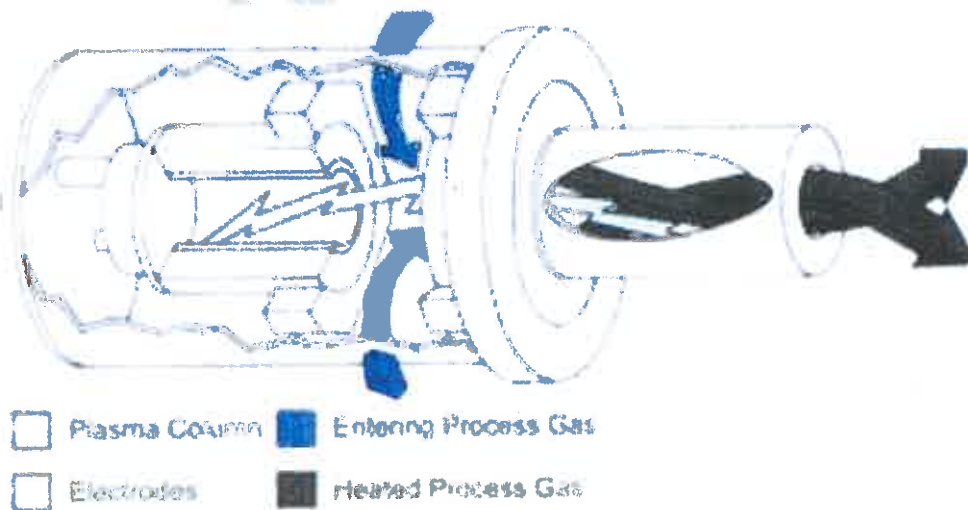
Anaerobic Digestion—uses bacteria to break down food waste and release methane gas as a byproduct that can be used for electricity/energy generation. The organic residue can be used as a soil amendment.

APPENDIX E

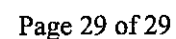
DISCUSSION ON PLASMA GASIFICATION

Plasma gasification is the gasification of matter in an oxygen-starved environment to decompose waste material into its basic molecular structure. Plasma gasification does not combust the waste as incinerators do. It converts the organic waste into a fuel gas that still contains all the chemical and heat energy from the waste. It converts the inorganic waste into an inert vitrified glass.

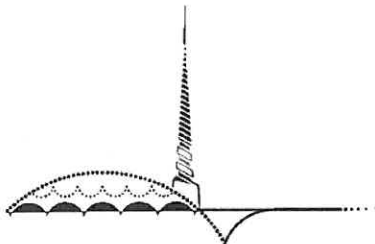
Plasma is considered a 4th state. Electricity is fed to a torch, which has two electrodes, creating an arc. Inert gas is passed through the arc, heating the process gas to internal temperatures as high as 25,000 degrees Fahrenheit. The following diagram illustrates how the plasma torch operates.



PROCESS FLOW DIAGRAM- Plasma Gasification
http://recoveredenergy.com/d_plasma.html



Marin County Civil Grand Jury



Date: May 8, 2013

Dawn Weisz, Executive Officer
Marin Energy Authority
781 Lincoln Avenue
San Rafael, CA 94901

Re: Grand Jury Report: *Garbology in Marin: Wasted Energy*
Report Date May 8, 2013

Dear Dawn Weisz,

Enclosed please find an *advance copy* of the above report. Please note that Penal Code Section 933.05(f) specifically prohibits any disclosure of the contents of this report by a public agency or its officers or governing body prior to its release to the public, **which will occur on May 14, 2013.**

The Grand Jury requests that you respond in writing to the Findings and Recommendations contained in the report pursuant to Penal Code Section 933.05 (copy enclosed). The Penal Code is specific as to the format of responses. The enclosed *Response to Grand Jury Report Form* should be used.

Governing bodies should be aware that the comment or response from the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda, and open meeting requirements of the Ralph M. Brown Act. The Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized meeting.

The Penal Code is also specific about the deadline for responses. You are required to submit your response to the Grand Jury within 90 days of the report date:

1 hard copy to: The Honorable Judge James Ritchie
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

1 hard copy to: Rich Treadgold, Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Responses are public records. The clerk of the public agency affected must maintain a copy of your response. Should you have any questions, please contact me at 415-286-6494 or at the above address.

Sincerely,



Rich Treadgold, Foreperson
2012/2013 Marin County Civil Grand Jury

Enclosures: Summary of Penal Code sec. 933.5; Penal Code Sec. 933.05; Response Form

RESPONSE TO GRAND JURY REPORT FORM

Report Title: *Garbology in Marin: Wasted Energy*

Report Date: May 8, 2013

Public Release Date: May 14, 2013

Response by: *Dawn Weisz, Executive Officer*

FINDINGS

- I (we) agree with the findings numbered: *N/A*
- I (we) disagree wholly or partially with the findings numbered: *N/A*
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered *N/A* have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered *N/A* have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered *N/A* require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered *R1, R3 & R4* will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: *6/28/13* Signed: *Dawn Weisz*

Number of pages attached *1*



Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Alexandra Cock
Town of Corte Madera

Larry Bragman
Town of Fairfax

Len Rifkind
City of Larkspur

Ken Wachtel
City of Mill Valley

Denise Athas
City of Novato

Tom Butt
City of Richmond

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

July 11, 2013

Rich Treadgold, Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Re: Response to Grand Jury Report: Garbology in Marin: Wasted Energy

Dear Rich Treadgold:

Recommendations numbered R-1, R-3 and R-4 will not be implemented because they are not warranted or are not reasonable.

Although the MEA fully supports the development of a waste-to-energy facility at the RLI landfill in Marin County, it cannot implement recommendations numbered R-1, R-3 or R-4 because it is not one of the public agencies referenced in these recommendations.

Further, the MEA does not have any planning, regulatory or management authority with respect to this landfill.

Kind Regards,

Dawn Weisz
Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

781 Lincoln Avenue
Suite 320
San Rafael, CA 94901

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RESPONSE TO GRAND JURY REPORT FORM

Report Title: *Garbology in Marin: Wasted Energy*

Report Date: May 8, 2013

Public Release Date: May 14, 2013

Response by: *Dawn Weisz, Executive Officer*

FINDINGS

- I (we) agree with the findings numbered: *N/A*
- I (we) disagree wholly or partially with the findings numbered: *N/A*
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered *N/A* have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered *N/A* have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered *N/A* require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered *R1, R3 & R4* will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: *6/28/13* Signed: *Dawn Weisz*

Number of pages attached *1*



Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Alexandra Cock
Town of Corte Madera

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Ken Wachtel
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Denise Athas
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City of Richmond

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

July 11, 2013

Rich Treadgold, Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Re: Response to Grand Jury Report: Garbology in Marin: Wasted Energy

Dear Rich Treadgold:

Recommendations numbered R-1, R-3 and R-4 will not be implemented because they are not warranted or are not reasonable.

Although the MEA fully supports the development of a waste-to-energy facility at the RLI landfill in Marin County, it cannot implement recommendations numbered R-1, R-3 or R-4 because it is not one of the public agencies referenced in these recommendations.

Further, the MEA does not have any planning, regulatory or management authority with respect to this landfill.

Kind Regards,

Dawn Weisz
Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

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Suite 320
San Rafael, CA 94901

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July 11, 2013

TO: Marin Energy Authority Board

FROM: Greg Brehm, Resource Coordinator

RE: Power Purchase Agreement with RE Kansas, LLC (Agenda Item #4 - C.6)

ATTACHMENT: A. Draft Amended and Restated Power Purchase Agreement with Recurrent Energy / RE Kansas, LLC
B. Draft Option Letter MEA PPA for Early Delivery Under Power Purchase Agreement with Recurrent Energy / RE Kansas, LLC

Dear Board Members:

SUMMARY:

In August, 2012 the MEA Board approved the short term Power Purchase Agreement with RE Kansas, LLC, a new solar photovoltaic facility located in California's Central Valley. The facility is being developed by Recurrent Energy (RE) Kansas LLC, a wholly owned subsidiary of San Francisco based Recurrent Energy, the primary solar development company for Sharp Corporation worldwide.

The facility is well into the development process, and the developer has negotiated a PPA with an Investor Owned Utility for the purchase of the facility's output beginning in 2018. The August, 2012 short term Power Purchase Agreement between MEA and RE Kansas, LLC allowed the developer to advance construction to January 2016. The PPA with MEA included a provision for an additional advance of construction and energy deliveries to January of 2015, one additional year.

Because the termination of the Rio Solar PPA left a gap in energy supply for 2015, staff queried RE Kansas LLC about the possibility of exercising the early delivery option. The Seller responded positively and Staff has negotiated the draft Option Letter for early delivery under the Power Purchase Agreement and the draft Amended and Restated Power Purchase Agreement. This power purchase opportunity is particularly interesting due to its attractive price, the projects' viability and the developer's deep experience and strong track record in developing similar projects.

Renewable energy volumes produced by the facility will complement MEA's existing RE supply with output from a regionally located generating project. The timing of deliveries will help replace lost energy deliveries from the terminated Rio Solar PPA and the planned reduction in renewable energy deliveries under the SENA agreement. Additional information is provided below regarding the prospective counterparty.

Background – Recurrent Energy/RE Kansas LLC

- Recurrent Energy
 - Development arm and wholly owned subsidiary of Sharp Corporation
 - Headquartered in San Francisco with regional offices in Toronto and Chicago and teams in New York, Dallas and Houston.
 - 100 professionals
 - Project pipeline of 2,500 MW and over 500 MW of contracted projects and 130 MW of California projects

Contract Overview – RE Kansas LLC

- Project: New solar PV project
 - Project size is 20 MW with 28% capacity factor – capable of supplying the annual electric needs of approximately 8,000 homes
- Project location: Lemoore, California (Kings County) or one of six alternative sites in Kings, Kern or Fresno Counties
- Project will utilize technologically proven ground mount, single axis solar PV technology
- Guaranteed commercial operation date: January 1, 2016 with *potential for deliveries as soon as January 1, 2015*
- Contract term: 2 years or up to 3 years with earliest allowed delivery date
- Delivery profile: peaking
- Expected annual energy production: approximately 49,000 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production (70% of projected annual deliveries)
- Energy price: fixed energy prices applicable to each year of contract
- No credit/collateral obligations for MEA
- MEA to receive financial compensation in the event of Seller's failure to successfully achieve certain development milestones
- MEA to receive financial protection from costs associated with changes in law and compliance therewith

Summary:

The RE Kansas project is a good fit for MEA's resource portfolio based on the following considerations:

- The project size supports MEA's planned expansion and future renewable energy requirements
- Timing of initial energy deliveries under the agreement is aligned with planned reduction in renewable energy deliveries under SENA agreement
- The project is being operated/expanded by an experienced team, which is currently supplying power from various projects to SCE and PG&E
- The project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1")
- The project is highly viable and in the middle stages of development
- Energy from the project is competitively priced

Recommendation: Approve option letter MEA PPA and amended and restated power purchase agreement with RE Kansas LLC for additional renewable energy supply.

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: RE Kansas LLC, a Delaware limited liability company

Buyer: Marin Energy Authority, a California joint powers authority

Effective Date:

Description of Facility: As set forth in Exhibit A hereto.

Contract Term: Commencing on the Effective Date and ending on December 31, 2017, unless otherwise specified herein.

Delivery Term: Commencing on the Commercial Operation Date and ending on December 31, 2017, unless otherwise specified herein.

Contract Price:

(a) in respect of Energy and Green Attributes:

\$ [REDACTED] per MWh of Energy (and associated Green Attributes) in 2014;
\$ [REDACTED] per MWh of Energy (and associated Green Attributes) in 2015;
\$ [REDACTED] per MWh of Energy (and associated Green Attributes) in 2016; or
\$ [REDACTED] per MWh of Energy (and associated Green Attributes) in 2017; and

(b) in respect of Capacity Attributes:

\$ [REDACTED] per kW per month of local Resource Adequacy Capacity or, solely in the event that the Resource Adequacy Capacity constitutes system Resource Adequacy Capacity but not local Resource Adequacy Capacity, \$ [REDACTED] per kW per month of system Resource Adequacy Capacity.

Assets Sold:

Energy, sold on an as-available, as-generated basis

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

- ☒ Renewable Energy Credit (Bucket 1)
- ☐ Renewable Energy Credit (Bucket 2)
- ☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Limitation on Damages:

Construction and Capacity Damages Cap: \$600,000

Governing Law: California

Notice Addresses:

Seller:

RE Kansas LLC
c/o Recurrent Energy
300 California Street, Ste. 700
San Francisco, CA 94014
Attention: Director of Asset Management
Phone No.: (415) 675-1500 ext. 495
Fax No.: (415) 675-1501

Buyer:

Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attention: Dawn Weisz, Executive Officer
Fax No.: (415) 459-8095
Phone No.: (415) 464-6020
Email: dweisz@marinenergy.com

Real Time Scheduling (24/7):

SCName: Shell Energy North America (SENA)
SC ID: CEMA
Email: TR-San-Diego-Real-Time-Opps@shell.com _____
Phone No.: 858-320-1500
Fax No.: 858-526-2140

With a copy to:

Richards, Watson & Gershon
44 Montgomery Street, Suite 3800
San Francisco, California 94104-4811
Attention: Greg Stepanicich
Fax No.: (415) 421-8486
Phone No.: (415) 421-8484
Email: gstepanicich@rwglaw.com

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

SELLER
RE Kansas LLC

By: _____
Name: _____
Title: _____

BUYER
Marin Energy Authority

By: _____
MEA Chairperson

By: _____
MEA Executive Officer

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Exhibits:

Exhibit A	Description of the Facility
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Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Emergency Contact Information
Exhibit D	Output of the Facility
Schedule D-1	Expected Energy
Exhibit E	Milestones
Exhibit F	Quarterly Milestone Progress Reporting Form

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

This Amended & Restated Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date, between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller and Buyer (i) have entered into that certain Power Purchase and Sale Agreement, dated as of August 3, 2012 (the “**Original PPA**”), (ii) have accepted and agreed to that certain “Option Letter – MEA PPA” as of July [], 2013 (the “**Option Letter**”), and (iii) upon issuance by Seller of the “Early Online Notice” (as defined in the Option Letter) to Buyer, amend, restate, replace and supersede the terms of the Original PPA as provided herein;

WHEREAS, Seller intends to develop, design, construct, and operate the solar photovoltaic generating facility to be located in California in the location identified in Exhibit A (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, all Energy generated by the Facility, any Green Attributes related to the generation of such Energy, and all Capacity Attributes;

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 Terms.** Terms used in this Agreement not otherwise defined on the Cover Sheet, in the Preamble or herein shall have the meaning set forth below:

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

“**Agreement**” shall have the meaning set forth in the Preamble.

“**Available Capacity**” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

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

“Buyer” shall have the meaning set forth on the Cover Sheet.

“Buyer Default” shall have the meaning set forth in Section 12.2.

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

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

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

“Capacity Damages” shall have the meaning set forth in Exhibit B.

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Facility has been constructed, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“Change in Compliance Costs” means the adoption, promulgation, modification, or re-interpretation after the Effective Date (or the taking of any other action by any Governmental Authority) of or with respect to any Law that materially affects the obligations and requirements under this Agreement related to the Facility’s compliance, reporting and eligibility requirements, including but not limited to certification as a Participating Intermittent Resource, an Eligible Renewable Energy Resource, WREGIS compliance, Green Attributes, the provision of Capacity Attributes and Resource Adequacy Benefits.

“Commercial Operation” shall have the meaning set forth in Exhibit B.

“Commercial Operation Date” shall have the meaning set forth in Exhibit B.

“Commercial Operation Delay Damages” shall have the meaning set forth in Exhibit B.

“Confidential Information” shall have the meaning set forth in Section 20.1.

“Construction and Capacity Damages” shall mean, collectively, Construction Delay Damages, Commercial Operation Delay Damages, and Capacity Damages.

“Construction and Capacity Damages Cap” shall have the meaning set forth on the Cover Sheet.

“Construction Delay Damages” shall have the meaning set forth in Exhibit B.

“Contract Price” shall have the meaning set forth on the Cover Sheet.

“Contract Term” shall have the meaning set forth in Section 2.1.

“Contract Year” means each calendar year during the Delivery Term, commencing on the Commercial Operation Date, *provided* that (i) if the first (1st) Contract Year is not a full calendar year, then the first (1st) Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, or (ii) if the last Contract Year is not a full calendar year, then the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Delivery Term. Requirements, limitations or allowances hereunder in respect of a Contract Year (other than those amounts set forth on Schedule D-1) which is not a full calendar year shall be prorated for the length of such Contract Year, *mutatis mutandis*.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“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 by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Period” means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any operating 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

Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

c) the CAISO orders, directs, alerts or provides notice to a Party, as a result of physical operational constraints on the CAISO electric system, to reduce Energy production from a Facility to a level lower than the amount of Energy forecasted to be produced by the Facility for the same period of time as determined reasonably by Seller pursuant to this Agreement;

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

e) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

"Deemed Energy Generation" means the quantity of electric energy, expressed in MWh, that would have been produced by the Facility and made available at the Delivery Point, but that is not produced by the Facility and made available at the Delivery Point during a relevant measurement period, based on relevant availability of the Facility, weather, and historical data, including such information that Seller shall provide to Buyer upon Buyer's request.

"Delivery Point" means the PNode designated by the CAISO for the Facility.

"Delivery Term" shall have the meaning set forth on the Cover Sheet.

"Development Security" means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody's, in the amount of the Construction and Capacity Damages Cap.

"Earliest COD" shall have the meaning set forth in Exhibit B.

"Effective Date" shall have the meaning set forth on the Cover Sheet.

"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) and (2), as either code provision is amended or supplemented from time to time.

"Energy" means electrical energy, measured in MWh, that is produced by the Facility.

"Event of Default" means either a Seller Default or Buyer Default as specified in Article 8.

"Expected Energy" means, for the relevant Contract Year, the estimated Energy to be delivered from the Facility as set forth on Schedule D-1 for such period, which amounts on

Schedule D-1 are (i) based on the planned Installed Capacity of the Facility, (ii) based on a capacity factor of no less than twenty-eight percent (28%), (iii) consistent with the Guaranteed Capacity and (iv) to be updated in accordance with Section 2(a) of Exhibit B.

“Facility” means the facility described more fully in Exhibit A attached hereto.

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

“Force Majeure Event” shall have the meaning set forth in Section 11.1.

“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.

“Forward 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 Forward 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 Forward Settlement Amount shall be zero dollars (\$0). The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO tariff.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under applicable state RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

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

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or

parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, 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 the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the project 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.

“Guaranteed Capacity” shall have the meaning set forth on Exhibit A.

“Guaranteed Commercial Operation Date” means the date specified in Exhibit B.

“Guaranteed Construction Start Date” means the date specified in Exhibit B.

“Guaranteed Output” means seventy percent (70%) of the Expected Energy.

“Indemnified Party” shall have the meaning set forth in Section 18.1.

“Indemnifying Party” shall have the meaning set forth in Section 18.1.

“Installed Capacity” means the sum of the Inverter Capacities of all the installed inverter units at the Facility, expressed in MW AC.

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

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 9.2.

“Inverter Capacity” means the manufacturer’s output rating (expressed in MW AC) of the electrical current inverter, as indicated on the nameplate physically attached to such inverter.

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or 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 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.

“Lien” means any mortgage, pledge, lien (including mechanics’, labor or materialmen’s liens), charge, security interest, encumbrance or claim of any nature.

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

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth in Exhibit E.

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Option Letter” has the meaning provided in the recitals hereto.

“Original PPA” has the meaning provided in the recitals hereto.

“Output Event of Default” has the meaning set forth in Exhibit D.

“Participating Intermittent Resource” or **“PIRP”** has the meaning set forth in the CAISO tariff or a successor CAISO program for intermittent resources.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

“Party” shall have the meaning set forth in the Preamble.

“Performance Security” means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, in the amount of the Construction and Capacity Damages Cap.

“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.

“PPT” means Pacific Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

“Preapproved Revised Site” means each of the sites for the Facility set forth in Exhibit A-1.

“Product” means (i) Energy, (ii) Green Attributes and (iii) Capacity Attributes.

“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 electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to

accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating 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.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

“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 Credit (Bucket 1)” 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.

“Renewable Energy Credit (Bucket 2)” 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 3)” 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision (such obligations (or successor program requirements, as the CPUC, CAISO

or other regional entity may prescribe), the “**Resource Adequacy Obligations**”) and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**Resource Adequacy Capacity**” means the megawatt amount that the CAISO recognizes from a Facility that qualifies for Buyer’s Resource Adequacy Obligations and is associated with the Facility’s Capacity Attributes.

“**Resource Adequacy Obligations**” shall have the meaning set forth in the definition of the term “Resource Adequacy Benefits” in this Section 1.1.

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

“**Scheduling Coordinator**” 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.

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

“**Seller Default**” shall have the meaning set forth in Section 12.1.

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

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Delivery 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.

“**Termination Payment**” means the sum of the Forward Settlement Amount plus all amounts owed by the defaulting Party to the non-defaulting Party under this Agreement, less any amounts owed by the non-defaulting Party to the defaulting Party determined as of the date of termination.

“**Test Energy**” means the Energy delivered commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and ending when Seller advises Buyer of the occurrence of the Commercial Operation Date.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

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

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, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(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 work or provision in respect of which such examples are provided;

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until December 31, 2017, 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 20 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. Subject to Section 3.6, Buyer shall have no obligation whatsoever to purchase the Product from the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) All Facility systems necessary for continuous operation and metering have been installed and are tested and certified;

(b) All applicable agreements between Seller and CAISO required for the performance of Seller's obligations under this Agreement have been executed, delivered and shall remain in full force and effect, including a Participating Generator Agreement, a Meter Service Agreement, and a Scheduling Coordinator Agreement and a copy of each agreement delivered to Buyer;

(c) All applicable agreements between Seller and the PTO, including an Interconnection Agreement, have been executed, delivered and shall remain in full force and effect and a copy of each agreement delivered to Buyer;

(d) The Interconnection Facilities of Seller have been installed and are able to accept the full-load output of the Facility;

(e) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility have been obtained and shall remain in full force and effect;

(f) Seller will have received the requisite pre-certification of the CEC Certification and Verification (and will reasonably expect to receive in no more than ninety (90) days from the Commercial Operation Date the final CEC Certification and Verification) for the Facility;

(g) Seller (with the reasonable participation of MEA) 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 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 or have completed any other similar requirements applicable to Seller to enable Buyer to fulfill its RPS requirements; and

(h) Seller successfully completes an initial Facility performance test under Seller's EPC contract for the Facility which demonstrates peak Facility electrical output of no less than ninety percent (90%) of the Guaranteed Capacity (as adjusted for ambient conditions on the date of the performance test), and Seller has delivered to Buyer a certification of a licensed professional engineer certifying that Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity and that such equipment is capable of generating energy in accordance with the manufacturer's specifications.

2.3 **Failure to Satisfy Conditions Precedent.** If Seller fails to complete the conditions precedent in Section 2.2(a)-(h) by the Guaranteed Commercial Operation Date, then Buyer shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder; provided, however, to the extent that Buyer does not immediately elect to exercise such termination right: (x) Buyer may thereafter exercise such termination right in its sole discretion prior to the Commercial Operation Date and (y) Seller shall be obligated to pay the liquidated damages set forth in Exhibit B.

2.4 **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit F.

2.5 **Revised Site.** At any time on or following the Effective Date until September 30, 2013, Seller shall have the right to substitute the site selected for the Facility by providing notice to MEA designating the Preapproved Revised Site along with a revised Exhibit A in the form attached hereto. Upon Seller's delivery of such notice, Exhibit A shall be replaced with the revised Exhibit A provided as part of such notice, *mutatis mutandis*. MEA acknowledges and agrees that it has approved and accepted all of the sites and Facility descriptions provided in Exhibit A-1 for all purposes of this Section 2.5. Following its receipt of such notice, MEA may request and Seller shall provide additional information about the Preapproved Revised Site to enable the Parties to implement such notice.

ARTICLE 3

PURCHASE AND SALE

3.1 **Sale of Product.** In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, (i) all of the Energy produced by the Facility (as and when the same is produced) and all of the Green Attributes attributable to the Energy produced by the Facility, at the Contract Price in respect of Energy and Green Attributes in effect at the time of delivery, and (ii) all of the Capacity Attributes at the Contract Price in respect of Capacity Attributes in effect at the time of delivery.

3.2 **Sale of Green Attributes.** Subject to Section 3.5, at Seller's request and sole cost (which shall only include documented third party costs), Buyer shall use commercially reasonable efforts to assist Seller and cooperate with Seller, as necessary, in connection with the creation, verification and transfer of Green Attributes. Notwithstanding anything to the contrary herein, "Green Attributes" do not include production tax credits or investment tax credits associated with the construction, ownership or operation of the Facility and other financial incentives in the form of credits, grants, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

3.3 **Contract Price.** During the Delivery Term, Buyer shall pay Seller the Contract Price for all Product generated by the Facility: (a) with regard to all Product other than Capacity Attributes, on a per MWh basis, calculated based on all Energy deliveries by Seller to Buyer at the Delivery Point, and (b) with regard to Capacity Attributes, on a kW per month of Resource Adequacy Capacity basis, as most recently determined by the CAISO.

3.4 **Ownership of Renewable Energy Incentives.** During the Delivery Term: Seller shall have all right, title and interest in and to all Renewable Energy Incentives, and other items of whatever nature relating to the foregoing that are available with respect to the Facility or as a result of Energy being produced from the Facility. Buyer acknowledges that any Renewable Energy Incentives and other items of whatever nature relating to 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 agrees to indemnify, defend, hold harmless and compensate Seller for any losses, claims, liabilities, or expenses arising out of or resulting from Buyer claiming any right with respect to the Renewable Energy Incentives not expressly granted under this Agreement. Buyer shall cooperate with Seller in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall notify Seller of its intent to claim

such Future Environmental Attributes within thirty (30) days of the date on which such Law becomes effective. Buyer shall bear all costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes, and Buyer shall notify Seller of its election to purchase such Future Environmental Attributes within forty-five (45) days after such actions and costs are determined by the Parties; *provided*, that if Buyer does not notify Seller of its election to purchase within such forty-five (45) day period, Seller shall retain all right, title and interest in and to such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to purchase Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Attributes prior to any such sale or purchase, including agreement with respect to (i) appropriate sale, purchase, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. Subject to the terms of Section 2(d) of Exhibit B, if and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy, Green Attributes and Capacity Attributes made available prior to the Delivery Term. During such period of availability prior to the Delivery Term, Buyer shall be obligated to purchase from Seller (i) all such Test Energy and Green Attributes attributable to the Test Energy produced by the Facility, at an amount equal to seventy-five percent (75%) of the Contract Price in respect of Energy and Green Attributes in effect at the time of delivery. and (ii) all Capacity Attributes at an amount equal to one hundred percent (100%) of the Contract Price in respect of Capacity Attributes in effect at the time of delivery.

3.7 **Capacity Attributes**.

During the Delivery Term and any period during which Seller delivers Test Energy to Buyer:

- (a) Seller shall be responsible for the cost and installation of any network upgrades associated with the Facility;
- (b) Seller shall use commercially reasonable efforts to obtain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller.

(c) In the event that Seller obtains Full Capacity Deliverability Status for the Facility from the CAISO, then commencing on the date of effectiveness of Full Capacity Deliverability Status through the end of the Delivery Term:

- a. Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility; and
- b. Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.8 **CEC Certification and Verification.** Subject to Sections 2.2(f) and 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Contract Term.

3.9 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.9 means efforts consistent with and subject to Section 3.12.

3.10 **California Renewables Portfolio Standard.** Subject to Sections 2.2(f) and 3.12, 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 the CPUC or CEC from time to time.

3.11 **Participation in PIRP.** Seller shall comply with all rules and regulations regarding PIRP if Buyer elects to have the Facility participate in PIRP, subject to Section 3.12. If the rules and regulations regarding PIRP or any successor program are changed such that Seller’s obligations are materially increased, Seller shall have the right to terminate any obligations of Seller under this Agreement to assist Buyer in its participation in PIRP or any successor program. For the purpose of this section, the determination of what changes constitute a “material increase” is within the sole discretion of Seller.

3.12 **Change in Compliance Costs.** Seller shall deliver written notice to Buyer sixty (60) days after any change, amendment, repeal or enactment of Law which results in the occurrence of any Change in Compliance Costs, which notice shall describe in reasonable detail the Change in Compliance Costs, its effects on Seller or the Facility, and the additional costs associated with remedial measures or other expenses to be undertaken with respect to Seller or the Facility. Seller shall pay all such costs up to a maximum of \$200,000 per Contract Year. Seller shall provide all information reasonably requested by Buyer to verify any Change in Compliance Costs. In the event such costs exceed the maximum in a Contract Year, Seller shall

have no responsibility to pay such costs and Seller shall submit an invoice to Buyer for such costs in accordance with Section 9.1. Buyer shall have sixty (60) days to evaluate such notice, and shall, by the end of such period, either (i) agree to reimburse Seller for all or some of the costs that exceed the maximum established herein, or (ii) waive Seller's obligation to take such actions, or any part thereof for which Buyer has not agreed to reimburse Seller and, in either case, Seller shall not be in default under this Agreement for failure to meet any Law or requirement related to such Change in Compliance costs for such Contract Year. In the event Buyer waives Seller's obligation pursuant to (ii) above, this Agreement shall remain in effect (without any reduction in Buyer's obligations hereunder to purchase or pay for all Product), and Buyer and Seller shall work in good faith to try and revise this Agreement to minimize the impact of such waiver on Buyer without materially impacting the economic benefits or burdens of the Parties.

ARTICLE 4 DELIVERY; TITLE; RISK OF LOSS

4.1 Delivery.

(a) Energy. During the Delivery Term and any period during which Seller delivers Test Energy to Buyer:

Seller shall make available and Buyer shall accept delivery at the Delivery Point of all Energy produced by the Facility on an as-generated, instantaneous basis. Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point. Buyer shall (i) arrange and be responsible for transmission service at and from the Delivery Point, (ii) bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point, (iii) schedule or arrange for Scheduling Coordinator services with its transmission providers to receive the Product at the Delivery Point, and (iv) be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point. So long as Seller is not in material breach of Section 4.4, Buyer shall be responsible for all imbalance and related or similar charges. The Parties agree to use commercially reasonable efforts to comply with all applicable policies of the CAISO in connection with the scheduling and delivery of Energy hereunder.

(b) Green Attributes. During the Delivery Term and any period during which Seller delivers Test Energy to Buyer:

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Facility to Buyer 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.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the 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.**

(a) Throughout the Delivery Term and any period during which Seller delivers Test Energy to Buyer, Buyer shall schedule or arrange for Scheduling Coordinator services to schedule the Energy to Buyer at the Delivery Point, in accordance with CAISO scheduling protocols. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) If a Party designates a third party to act as its Scheduling Coordinator, that Party shall provide the other Party ten (10) Business Days advance notice of such designation.

(c) Buyer shall be solely responsible for all acts and omissions of Buyer or its designee for all costs, charges and liabilities incurred by Buyer or its designee under this section.

(d) Buyer or its designee shall comply with all applicable obligations as Scheduling Coordinator under the CAISO tariff for the Facility and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement and the CAISO's protocols and scheduling practices and all requirements of PIRP (if Buyer has requested that the Facility participate in PIRP)

4.4 **Forecasting.** During the Delivery Term and during its delivery of Test Energy to Buyer, Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Available Capacity.** By December 1 for each Contract Year, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Available Capacity.** Fifteen (15) Business Days before the beginning of Commercial Operation, and thereafter forty-five (45) 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 Available Capacity for each day of the following month in a form reasonably acceptable to Buyer. In addition, commencing on the

date of effectiveness (if any) of Full Capacity Deliverability Status through the end of the Delivery Term, Seller shall provide to Buyer and Buyer's designee a monthly Resource Adequacy Supply Plan (in a form reasonably acceptable to Seller and Buyer) forty-five (45) days in advance of the next reporting month.

(c) Daily Forecast of Available Capacity. During the Delivery Term, if the Available Capacity has changed from the monthly forecast of available capacity described in subsection (b), above, Seller or Seller's agent shall provide a non-binding day ahead forecast of Available Capacity to Buyer or Buyer's designee (as applicable).

(d) During the Delivery Term and any period during which Seller delivers Test Energy to Buyer, Seller shall notify Buyer (or Buyer's designee) of any changes in Available Capacity of one half (0.5) MW or more as compared to the daily forecast of Available Capacity, as soon as reasonably possible. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer.

4.5 Events Downstream of the Delivery Point. Seller shall be responsible for all interconnection, electric losses and transmission arrangements and costs required to make available Energy and Test Energy from the Facility to the Delivery Point. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point to points beyond.

ARTICLE 5 REDUCTIONS IN DELIVERY; TEMPORARY SHUTDOWN

5.1 Delivery Obligation. The obligation of Seller to make available to Buyer the Product pursuant to this Agreement is on an as-generated, instantaneous basis. Seller's failure to make available to Buyer Product shall not give the Buyer the right to any damages, other than as set forth in Exhibit D.

5.2 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 5.1 or Exhibit D:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

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

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Period pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 7.2.

5.3 **Buyer's Failure to Take Energy.**

(a) Compensation for Unexcused Failure to Take or Buyer Default. If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Facility output is curtailed or reduced as a result of the manner in which Buyer (as Scheduling Coordinator or otherwise) submits bids or schedules for the Facility into the CAISO market, or (iii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation for such period and (2) the Contract Price applicable during such period.

(b) Limit on Compensation during Curtailment Periods. In the event of a Curtailment Period, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation for such period, and (2) the Contract Price applicable during such period; *provided*, however that any payment pursuant to this Section 5.3(b) shall be subject to a maximum of 30 MWh per MW of Available Capacity per Contract Year. Seller shall receive no compensation from Buyer for any Curtailment Period, in the aggregate, in excess of 30 MWh per MW per Contract Year.

(c) Information Sharing for Deemed Energy Generation. Seller shall provide Buyer with a calculation of the amounts due under this Section 5.3, and shall provide all relevant data used for the Deemed Energy Calculation at Buyer's request. Any amounts due for Deemed Energy Generation shall be included on the monthly invoice, and disputes thereof shall be handled in accordance with Article 9.

ARTICLE 6

TAXES

6.1 **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 Energy to Buyer, that are imposed 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 Energy that are imposed on Energy 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 hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

6.2 **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 therefore 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 7 MAINTENANCE OF THE FACILITY

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

7.2 **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.

ARTICLE 8 METERING

8.1 **Metering.** During the Delivery Term and during its delivery of Test Energy to Buyer, Seller shall measure the amount of Energy produced at the Facility using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. 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 to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

8.2 **Meter Verification.** Annually during the Delivery Term and Seller's delivery of Test Energy to Buyer, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request (limited to once every six (6) months), Seller shall test the meter. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the

amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 9 INVOICING AND PAYMENT; CREDIT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) Business Days after the end of the prior monthly billing period during the Delivery Term and during Seller's delivery of Test Energy.

9.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Such payment shall occur within twenty (20) days following the date Seller sent the invoice to Buyer. 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 three percent (3%) (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.

9.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by applicable Law. No more than once per Contract Year, and upon fifteen (15) days written notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement, at address for Seller set forth on the Cover Sheet. If Buyer chooses to exercise its audit rights under this Section 9.3, any third party costs, incidental expenses (including travel), and related charges associated with Buyer's exercise of this provision shall be the responsibility of the Buyer.

9.4 **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 9.5, 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 monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the non-erring Party received notice thereof.

9.5 **Billing Disputes.** Either Party may dispute invoiced amounts, but shall pay to the other Party the undisputed invoiced amounts (other than amounts that are obvious clerical errors) on or before the invoice due date. To resolve any billing dispute, the Parties shall use the

procedures set forth in Article 17. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2, accruing from the date on which such payment was due. Either Party at any time may offset against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including damages and other payments, that are owed by Seller to Buyer pursuant to this Agreement.

9.6 **Payments Due Buyer.** Buyer shall invoice Seller for any Construction and Capacity Damages owed pursuant to Exhibit B or Payments in Lieu of Performance owed pursuant to Exhibit D in accordance with the process set forth in Section 9.1. Seller shall deduct any payments due to Buyer in accordance with Exhibit D from the invoice for the month in which such amount becomes due to Buyer. In the event that, for any month, amounts due to Buyer exceed amounts due to Seller for such month, Seller shall deduct any such excess from the invoice for the following month(s); *provided, however*, that if Seller has not paid all amounts due Buyer within six (6) months from the month in which such amounts became due, Seller shall remit payment to Buyer for any remaining amount within ten (10) days after delivery of the invoice in the seventh (7th) month.

9.7 **Buyer's Revenue Maintenance.** During the time periods set forth below, Buyer shall:

(a) have anticipated and actual gross revenues for the period from October 1, 2012 through March 31, 2013 in excess of Thirty Million Dollars (\$30,000,000); and

(b) have anticipated and actual gross revenues at all times after April 1, 2013 and throughout the remainder of the Contract Term for each fiscal year in excess of Sixty Million Dollars (\$60,000,000).

9.8 **Buyer's Credit Rating.** The conditions in Section 9.7 shall not apply if Buyer maintains a Credit Rating of at least an Aa3 by Moody's and at least an AA- by S&P during the specified time period

9.9 **Seller's Development Security.** Within 30 days of the Effective Date, Seller shall deliver Development Security to Buyer pursuant to the terms set forth in Exhibit B. Seller shall maintain the Development Security in full force and effect until the earlier of (i) the Commercial Operation Date, (ii) payment of any Capacity Damages pursuant to Exhibit B, if applicable, or (ii) forty (40) days after termination of this Agreement. Within thirty (30) days of the expiration of Seller's obligation hereunder, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. In the event that the Development Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have ten (10) days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in sub-clause (ii) of the definition of Development Security.

9.10 **Seller's Performance Security.** On or prior to the Commercial Operation Date, Seller shall deliver Performance Security to Buyer which, if not in the form of cash, is in form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until forty (40) days after termination of this Agreement. Within thirty (30) days of the expiration of Seller's obligation hereunder, Buyer shall return the Performance Security to Seller, less amounts drawn. In the event that the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have ten (10) days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in sub-clause (ii) of the definition of Performance Security.

ARTICLE 10 NOTICES

10.1 **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.

10.2 **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) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 11 FORCE MAJEURE

11.1 Definition.

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

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

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy 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 (unless such inability is due to a change in Law or other Force Majeure Event); (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent Seller’s inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event; (v) 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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

11.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party 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.

11.4 **Partial or Full Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon thirty (30) days written notice to the other Party with respect to the Facility experiencing the Force Majeure Event. If at the end of such thirty (30) day period after notice, such Force Majeure Event is still in effect, this Agreement will automatically terminate. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1. Notwithstanding the foregoing, if the Facility is damaged or destroyed by a Force Majeure Event, Seller may, but shall have no obligation to, rebuild the Facility and recommence delivery of Product to Buyer. If Seller (a) notifies Buyer within sixty (60) days of the Force Majeure Event that Seller intends to rebuild the Facility and recommence delivery of Energy to Buyer and (b) makes good faith efforts to order replacement equipment within ninety (90) days of the occurrence of a Force Majeure Event, then, upon delivery of Product to Buyer, all terms and conditions of this Agreement will and shall be deemed to be in full force and effect upon the date of commercial operation of the rebuilt Facility.

ARTICLE 12

DEFAULTS; REMEDIES; TERMINATION

12.1 **Seller Defaults.** The occurrence of any of the following events or circumstances shall constitute an "Event of Default" upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Buyer to Seller and Lender, if any, as provided for in Section 16.3 (each, a "**Seller Default**"):

(a) Seller fails to pay any amounts due Buyer pursuant to this Agreement and such breach remains uncured for five (5) Business Days following notice of such breach to Seller;

(b) Seller breaches any material term of this Agreement, including any representation or warranty, and (i) Seller has failed to cure the breach within forty-five (45) days of Buyer's notice of such breach, or (ii) if Seller has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Buyer's notice, Seller has failed to cure the breach within such ninety (90) day period;

(c) Seller commences a voluntary case under any bankruptcy Law;

(d) a petition is filed against Seller in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one-hundred eighty (180) days after the date of the filing of such proceeding or Seller acquiesces;

(e) Seller's actual fraud or willful misconduct in connection with this Agreement;

(f) Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement any Product that was not generated by the Facility;

(g) Seller fails to post cash or provide a substitute letter of credit as described in Section 9.7 and 9.8 within the time period set forth therein;

(h) Seller consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, after taking into effect such consolidation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer; or

(i) (X) Seller fails to pay any Payment in Lieu of Performance damages in accordance with Exhibit D; or (Y) an Output Event of Default has occurred.

12.2 **Buyer Defaults.** The occurrence of any of the following events or circumstances shall constitute an “Event of Default” upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Seller to Buyer (each, a “**Buyer Default**”):

(a) Buyer fails to pay any amounts due Seller pursuant to this Agreement and such breach remains uncured for five (5) Business Days following notice of such breach to Buyer;

(b) Buyer breaches any material term of this Agreement, including any representation or warranty, and (i) Buyer has failed to cure the breach within forty-five (45) days after Seller’s notice of such breach, or (ii) if Buyer has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Seller’s notice, Buyer has failed to cure the breach within such ninety (90) day period;

(c) Buyer commences a voluntary case under any bankruptcy Law;

(d) Buyer fails to maintain its revenue requirements in accordance with Section 9.7;

(e) a petition is filed against Buyer in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one hundred eighty (180) days after the date of the filing of such proceeding or Buyer acquiesces; or

(f) Buyer’s actual fraud or willful misconduct in connection with this Agreement.

12.3 **Buyer’s Remedies.** Subject to Article 13, upon the occurrence and notice to Seller of a Seller Default, Buyer shall have the right (but not the obligation) to:

(a) suspend performance of its obligations under this Agreement; and/or

(b) receive from Seller direct damages incurred by Buyer in connection with such Seller Default (including during any applicable cure period, whether or not Buyer has elected to suspend performance during such cure period); provided, however that Buyer shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Seller Default.

12.4 **Seller's Remedies.** Subject to Article 13, upon the occurrence and notice to Buyer of a Buyer Default, Seller shall have the right (but not the obligation) to:

- (a) suspend performance of its obligations under this Agreement;
- (b) sell to a third Person, free and clear of any claims by Buyer, all Product for such period during which Seller suspends performance hereunder; and/or
- (c) receive from Buyer direct damages incurred by Seller in connection with such Buyer Default (including during any applicable cure period, whether or not Seller has elected to suspend performance during such cure period); provided, however that Seller shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Buyer Default.

12.5 **Termination for an Event of Default.**

(a) In addition to those remedies in Sections 12.3 and 12.4, if a Seller Default or a Buyer Default, as applicable, has occurred and remains uncured by the expiration of the applicable cure period, the non-defaulting Party may terminate this Agreement within thirty (30) days after the expiration of such cure period upon notice to the defaulting Party; provided, that if the non-defaulting Party does not terminate this Agreement within such thirty (30) day period, the Seller Default or Buyer Default, as the case may be, shall be deemed to have been waived by the non-defaulting Party.

(b) [Intentionally omitted.]

(c) As soon as practicable after notice of termination, the non-defaulting Party shall provide notice to the defaulting Party of the Termination Payment. The notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

(d) If the Termination Payment is positive, the defaulting Party shall pay such amount to the non-defaulting Party within ten (10) Business Days after the notice is provided. If the Termination Payment is negative (i.e., the non-defaulting Party owes the defaulting Party more than the defaulting Party owes the non-defaulting Party), then the non-defaulting Party shall pay such amount to the defaulting Party within thirty (30) days after the notice is provided.

(e) The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for dispute resolution as provided in Article 17.

ARTICLE 13
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

13.1 **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Seller's aggregate liability for a failure of (i) Seller to construct the Facility, (ii) the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or (iii) the Facility to achieve Commercial Operation at any specific capacity by the applicable dates set forth in Exhibit B, shall not exceed the Construction and Capacity Damages Cap.

13.2 **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER SELLER, NOR BUYER 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.

13.3 **WAIVER AND EXCLUSION OF OTHER DAMAGES**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE 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 LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 12.5, 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. 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 CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **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 applicable Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) The Facility is located in the State of California.

(f) SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES OR ANY LAW GOVERNING THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE. NO RESTRICTION, ELIMINATION OR OTHER ADVERSE EFFECT ON THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTE OR CAPACITY ATTRIBUTE SHALL RELIEVE BUYER OF ITS OBLIGATION TO PAY THE CONTRACT PRICE FOR THE DELIVERY OF ENERGY HEREUNDER.

(g) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

14.2 **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 applicable laws.

(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 applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other

evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

14.3 **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 applicable Law.

ARTICLE 15 ASSIGNMENT

15.1 **General Prohibition on Assignments.** Except as provided below and in Article 16, 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.

15.2 **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; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 16.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, Seller shall give notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a

written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Buyer.

15.3 Change of Control of Buyer. Subject to the following sentence, 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 no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) 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 16.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in its good faith and sole discretion, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Seller.

ARTICLE 16 LENDER ACCOMMODATIONS

16.1 Granting of Lender Interest. Notwithstanding Section 15.2, Seller may, without the consent of Buyer, 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. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller'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 Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

16.2 Rights of Lender. If Seller grants an interest under this Agreement as permitted by Section 16.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 12.1, and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Buyer 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 Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

16.3 **Cure Rights of Lender.** Buyer shall provide notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 hereof to any Lender, and Buyer 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 Seller Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

ARTICLE 17 DISPUTE RESOLUTION

17.1 **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.

17.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within 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.

17.3 **Attorneys' Fees.** If any legal action is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

ARTICLE 18 INDEMNIFICATION

18.1 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 (and in the case of Seller, its contractors constructing or providing services to the Facility (including suppliers) and its Lenders) (collectively, the “**Indemnified Party**”) from and against all 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 negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 18.1 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.

18.2 **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 18 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 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.

(a) 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.

(b) Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, 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 19 INSURANCE

19.1 Insurance

(a) *General Liability.* Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000).

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

(c) *Business Auto Insurance.* Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate.

(d) *Construction All-Risk Insurance.* Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(e) *Subcontractor Insurance.* Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (e)(i) and (e)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(e).

(f) *Evidence of Insurance.* Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

ARTICLE 20

CONFIDENTIAL INFORMATION

20.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and

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

20.2 Duty to Maintain Confidentiality. Buyer and Seller agree not to disclose Confidential Information received from the other to anyone (other than Buyer’s and Seller’s Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Facility (including suppliers), employees, officers and directors who agree to be bound by the provisions of this Article), without the deliverer’s prior written consent. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. In the event a recipient is required by Law or by a court or regulatory agency to disclose Confidential Information, the recipient shall, to the extent possible, give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the disclosing Party is permitted by applicable Law, exhausting any appeal requested by the disclosing Party at the disclosing Party’s expense), the receiving Party may disclose such Confidential Information.

20.3 Irreparable Injury; Remedies. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 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 13.2, consequential damages.

20.4 Disclosure to Lender. Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

ARTICLE 21 MISCELLANEOUS

21.1 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. 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.

21.2 **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.

21.3 **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 service provider and energy service recipient, 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).

21.4 **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.

21.5 **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, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

21.6 **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.

21.7 **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, 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.

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

21.9 **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 in connection with this Agreement.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: RE Kansas

APN: 024-100-006-000, 024-100-015-000

County: Kings County

Guaranteed Capacity: 20MW

P-node/Delivery Point: LEPRINO_1_N001/ Leprino Foods 115kV tap line adjacent to the site

Additional Information: Facility is located at the corner of Jersey Ave and 21st Avenue, Lemoore, Kings County CA, in PG&E service territory

Local Capacity Region: Fresno

EXHIBIT A-1 – PREAPPROVED REVISED SITES

DESCRIPTION OF THE FACILITY

Site Name: RE Kamm

APN: 040-080-35S

County: Fresno County

Guaranteed Capacity: 20MW

P-node/Delivery Point: STROUD_6_N001 / Stroud SW STA - Stroud 70 kV Line, located adjacent to the Site

Additional Information: Facility is located at the corner of W. Kamm Ave and S. Yuba Ave, San Joaquin, Fresno County, CA, in PG&E service territory

Local Capacity Region: Fresno

DESCRIPTION OF THE FACILITY

Site Name: RE Orion

APN: 024-260-018

County: Kings County

Guaranteed Capacity: 20MW

P-node/Delivery Point: HENRITTA_6_N101 / Henrietta/Tulare Lake 70kV line

Additional Information: Facility is located north of Avenal Cutoff Road, west of 25th Avenue, Stratford, Kings County CA, in PG&E service territory

Local Capacity Region: Fresno

DESCRIPTION OF THE FACILITY

Site Name: RE Kent South

APN: 026-010-041

County: Kings County

Guaranteed Capacity: 20MW

P-node/Delivery Point: HENRITTA_6_N101 / Henrietta/Tulare Lake 70kV line

Additional Information: Facility is located north of Avenal Cutoff Road, west of 25th Avenue, Stratford, Kings County CA, in PG&E service territory

Local Capacity Region: Fresno

DESCRIPTION OF THE FACILITY

Site Name: RE Old River One

APN: 184-490-04-01-5, 184-490-05-00-9

County: Kern County

Guaranteed Capacity: 20MW

P-node/Delivery Point: OLDRIVR_6_N001 / Kern-Old River #1 70kV line

Additional Information: Facility is located at the corner of Ashe Rd & Shafter Rd, Bakersfield, Kern County, CA, in PG&E service territory

Local Capacity Region: Kern

DESCRIPTION OF THE FACILITY

Site Name: RE Adams East

APN: 028-071-32ST

County: Fresno County

Guaranteed Capacity: 19MW

P-node/Delivery Point: SANJOQN_6_N001 / Mendota-San Joaquin-Helm

Additional Information: Facility is located at the corner of W. South Ave and S. Derrick Ave (Route 33), Cantua Creek, Fresno County, CA, in PG&E service territory

Local Capacity Region: Fresno

DESCRIPTION OF THE FACILITY

Site Name: RE Grangeville

APN: 004-230-026-000, 004-230-027-000

County: Kings County

Guaranteed Capacity: 20MW

P-node/Delivery Point: LEMOORE_6_N002 / Caruthers-Lemoore NAS-Camden 70kV

Additional Information: Facility is located at the corner of Grangeville Blvd Bypass and Grangeville Blvd, Lemoore, Kings County, CA, in PG&E service territory

Local Capacity Region: Fresno

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by June 30, 2014 (as may be extended pursuant to this Exhibit B, the “**Guaranteed Construction Start Date**”). The beginning of construction shall be the mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Facility.
- b. If construction does not begin on the Facility by the Guaranteed Construction Start Date, Seller shall pay “**Construction Delay Damages**” to Buyer on account of such delay. Construction Delay Damages shall be payable in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity for which construction has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until the earlier of: (a) the beginning of construction for the Facility; or (b) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month in the aggregate not to exceed the Construction and Capacity Damages Cap. Construction Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained to operate the Facility and to produce, sell and transmit Energy, (ii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer, and (iii) Seller has fulfilled all of the conditions precedent in Section 2.2. The “**Commercial Operation Date**” shall be the date on which Commercial Operation is achieved, provided, that if Commercial Operation is achieved prior to the Earliest COD, then the “**Commercial Operation Date**” shall be the Earliest COD.

- a. Seller shall cause Commercial Operation for the Facility by December 31, 2014 (as may be extended pursuant to this Exhibit B, the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer not less than five (5) Business Days in advance of the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved. Seller shall provide Buyer with an updated Schedule D-1 containing updated Expected Energy values for the Facility within thirty (30) days of the Commercial Operation Date, and such updated Schedule D-1 shall be considered Schedule D-1 for all purposes of this Agreement thenceforth.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded

to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer on account of such delay in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity which has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller for each MW of the Facility affected until the earlier of: (a) such MW of the Facility is completed and ready to produce and deliver Energy to Buyer; (b) the Commercial Operation Date; (c) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap; or (d) termination of this Agreement. 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.
- d. Notwithstanding anything to the contrary herein:
 - i. Unless the Parties agree in writing otherwise, Buyer shall have no obligation to purchase or accept (1) Test Energy prior to the later of (X) October 1, 2014 or (Y) Seller’s receipt of the requisite pre-certification of the CEC Certification and Verification, or (2) any Product prior to November 1, 2014 (the “**Earliest COD**”); and
 - ii. Seller may, by written notice to Buyer no later than May 1, 2014, elect to sell Test Energy or any Product to third parties prior to the Guaranteed Commercial Operation Date, in which event:
 - 1. during the period of time prior to the Commercial Operation Date, Seller shall, and Buyer shall not, schedule or arrange for Scheduling Coordinator services and undertake related responsibilities and obligations, including those set forth in Section 4.3;
 - 2. Seller shall have no obligation to sell or deliver, and Buyer shall have no obligation to purchase or accept, Test Energy; and
 - 3. all other provisions of this Contract shall continue to apply and be interpreted *mutatis mutandis*.
- 3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective thirty (30) days after written notice to Seller. Upon such termination, neither Party shall have further liability or obligation to the other Party,

other than Construction and Capacity Damages accrued prior to the date of notice of termination.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operate Date shall be extended, by a number of days equal to the period of such delay, if:
 - a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product are not received by September 30, 2013;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by September 30, 2014; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

provided, however, that any extension pursuant to this section shall not exceed three hundred sixty five (365) days.

5. **Failure to Reach Guaranteed Capacity.** If, sixty (60) days after Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have until one (1) year after the Commercial Operations Date to install additional capacity such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Construction and Capacity Damages due hereunder, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
7. **Construction and Capacity Damages As Liquidated Damages and Sole Remedy.** Construction and Capacity Damages shall be payable as liquidated damages and in lieu of actual damages accrued for any period during which Construction and Capacity Damages are assessed. Buyer’s sole remedy and Seller’s sole liability for the failure of (i) Seller to construct the Facility, (ii) the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date; or (iii) the Facility to achieve Commercial Operation at any specific Capacity shall be the payment by Seller of Construction and Capacity Damages as specified in Section 2, 3, and 6 above, and termination rights as specified in Section 4 above.

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:

Dawn Weisz, Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6020
Email: dweisz@marinenergy.com

SELLER:

General Counsel's Office
RE Kansas LLC
c/o Recurrent Energy
300 California Ste. 700
San Francisco, CA 94104
Fax No: (415) 675-1501
Phone No: (415) 675-1500 ext. 413
Email: legal@recurrentenergy.com

EXHIBIT D

OUTPUT OF THE FACILITY

SECTION 1 - PAYMENTS IN LIEU OF PERFORMANCE

For each Contract Year, Seller shall make payments to Buyer in lieu of performance for decreases in performance below the Guaranteed Output (“**Payments in Lieu of Performance**”).

(a) Payments in Lieu of Performance shall be calculated pursuant to the following formula:

$$(Bp - Cp) * (G - A1)$$

where:

Bp = the average price per MWh paid by Buyer to third parties (and negotiated on an arm’s length basis and reflecting a market rate, as reasonably determined by Buyer) during the relevant time period for equivalent energy and Green Attributes plus any reasonable transactional costs associated with such purchases;

Cp = the Contract Price (measured as the hourly rate per MWh) under this Agreement for the relevant time period;

G = the Guaranteed Output for the relevant period;

A1 = the actual amount of Energy produced by the Facility and delivered to Buyer during the relevant Contract Year, as adjusted pursuant to Section 3, below;

No payment shall be due if the calculation of $(Bp - Cp)$ or $(G - A1)$ yields a negative number.

(b) For each Contract Year, Seller shall send Buyer an audit within sixty (60) days of the anniversary of such date summarizing the output of the Facility during the preceding twelve (12) month period. Buyer shall have thirty (30) days following receipt of such audit to dispute the conclusions therein, after which time the audit shall be binding on the Parties. Any payments due to Buyer shall be remitted to Buyer within twenty (20) days of the binding audit.

SECTION 2 – OUTPUT EVENT OF DEFAULT

(a) “**Output Event of Default**” occurs if, for any Contract Year beginning with the second (2nd) Contract Year, the actual amount of Energy produced by the Facility and delivered to Buyer during the relevant Contract Year, as adjusted pursuant to Section 3 below, fails to exceed fifty percent (50%) of the Expected Energy for the relevant period.

SECTION 3 – ADJUSTED ANNUAL PRODUCTION

(a) For purposes of this calculation in Sections 1 and 2 above, the actual amount of Energy produced and delivered by the Facility during the Contract Year shall be increased to account for:

- (i) any period during which a Force Majeure Event (including any Curtailment Period) has occurred and is continuing;
- (ii) any period during which a Buyer Default has occurred; and
- (iii) for purposes of the calculation in Section 2 only, any output shortfall during such period caused by a non-Force Majeure major equipment malfunction, breakdown, or failure (“Major Equipment Failure”), if: (A) if all or a portion of the output shortfall during such period was principally caused by a Major Equipment Failure resulting in a reduction of Energy production of the Facility by at least fifty percent (50%) of the Expected Energy, and (B) such Major Equipment Failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice.

(b) The additional MWh contemplated in paragraph (a) shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to (x) the average production during the month of such non-production in the preceding two (2) Contract Years, if available, divided by the total number of days in all such months; (y) if in the second Contract Year, the average production during the month of such non-production in the preceding Contract Year, divided by the total number of days in such month; or (z) if in the first Contract Year, the average production during the previous month, divided by the total number of days in such month with respect to (i) (ii) and (iv) above and subject to adjustment with respect to (iii) above.

SECTION 4 – SOLE AND EXCLUSIVE REMEDY

(a) The Payments in Lieu of Performance shall be payable as liquidated damages and in lieu of actual damages. The Parties agree that the extent and amount of actual damages that would be suffered by Buyer as a result of Seller’s failure to achieve the performance standards set forth in this Exhibit D is impractical and extremely difficult to determine or estimate. Therefore, Payments in Lieu of Performance set forth in this Exhibit D represent the Parties’ best estimate of the sums that would be fair, average compensation for all losses that may be sustained as a consequence of the Facility’s failure to achieve performance standards set forth in this Exhibit D.

(b) Notwithstanding anything to the contrary herein, Buyer and Seller agree that where there are any decreases in performance requiring Payments in Lieu of Performance, Buyer’s sole and exclusive damage remedy for Seller’s failure to achieve the performance standards in this Exhibit D or for any output related defaults for any such Contract Year shall be the liquidated damages provided for in Section 2 of this Exhibit D.

SCHEDULE D-1
EXPECTED ENERGY

Contract Year	Expected Energy (MWh)
1 [2014]	0
2 [2015]	49,640
3 [2016]	49,392
4 [2017]	49,145

Contract Years and Expected Energy values set forth in this Schedule D-1 are subject to Seller's updates in accordance with Section 2(a) of Exhibit B.

Exhibit D

EXHIBIT E
MILESTONES

Milestone	Date for Completion
<i>Execution of Energy-Only Interconnection Agreement</i>	<i>December 31, 2012</i>
<i>Execution of Full-Deliverability Interconnection Agreement</i>	<i>December 31, 2013</i>
<i>Close of Construction Financing</i>	<i>June 30, 2014</i>
<i>Receive Construction Permits</i>	<i>June 30, 2014</i>
<i>Construction Start Date</i>	<i>June 30, 2014</i>
<i>Completion of Interconnection Facilities</i>	<i>November 30, 2014</i>
<i>Commercial Operation Date</i>	<i>December 31, 2014</i>

EXHIBIT F

QUARTERLY MILESTONE PROGRESS REPORTING FORM

Seller shall prepare a written report (this “Quarterly Milestone Progress Reporting Form”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing and start-up of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone 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. Bar chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter.
8. Forecast of activities scheduled for the current calendar quarter.
7. Written description about the progress relative to Seller’s Milestones.
8. List of issues that could potentially impact Seller’s Milestones.
9. 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.
10. 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.
11. 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.

**RE Kansas LLC
c/o Recurrent Energy
300 California Street, Ste. 700
San Francisco, CA 94014**

July [___], 2013

Ms. Dawn Weisz, Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

Re: Option Letter – MEA PPA

Ladies and Gentlemen:

Reference is made to that certain Power Purchase and Sale Agreement between RE Kansas LLC, a Delaware limited liability company (“**Seller**”), and Marin Energy Authority, a California joint powers authority (“**Buyer**” and, together with Seller, the “**Parties**” and each individually a “**Party**”), dated as of August 3, 2012, and attached hereto as Exhibit A (the “**PPA**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the PPA.

Seller and Buyer agree that Seller may in its sole discretion elect (the “**Option**”) to sell Test Energy and/or Product to Buyer by providing written notice (the “**Early Online Notice**”) to Buyer at any time on or prior to September 30, 2013. Upon any such delivery by Seller to Buyer of the Early Online Notice, (i) the Amended & Restated Power Purchase and Sale Agreement, previously executed by the Parties and attached hereto as Exhibit B (the “**A&R PPA**”), shall amend, restate, replace and supersede the PPA in all respects, and (ii) the PPA (and all of the terms and conditions thereof) shall cease to be effective. Prior to any such delivery by Seller to Buyer of the Early Online Notice, the A&R PPA shall not be effective.

The Option, this Option Letter, and Buyer and Seller’s rights and remedies under this Option Letter shall be subject in all respects to the terms and conditions of (i) prior to Seller’s delivery of the Early Online Notice, the PPA, or (ii) upon and following Seller’s delivery of the Early Online Notice, the A&R PPA.

The laws of the State of California shall govern this Option Letter.

Please execute this Option Letter in the space provided below and return it to us to confirm your agreement with the foregoing.

[Signature page follows]

Very truly yours,

RE Kansas LLC, as Seller

By: _____
Name:
Title:

Marin Energy Authority, as Buyer
hereby accepts and agrees to the foregoing as of the date first written above

By: _____
MEA Chairperson

By: _____
MEA Executive Officer

[SIGNATURE PAGE TO OPTION LETTER – MEA PPA]

EXHIBIT A

Refer to the attached copy of the PPA, incorporated herein by reference.

EXHIBIT B

Refer to the attached copy of the A&R PPA, incorporated herein by reference.



July 11, 2013

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Executive Officer

RE: Policy 007: Mileage and Toll Reimbursement (Agenda Item #4 C.7)

ATTACHMENT: Policy 007: Mileage and Toll Reimbursement

Dear Board Members:

SUMMARY: It has been the practice of MEA to reimburse staff for the use of their personal vehicle when used for MEA business. Relevant receipts, agendas, and reimbursement request forms, are required for staff requesting such reimbursement. To clarify MEA's practices regarding such reimbursement policy 007 has been prepared for Board consideration.

The proposed Policy 007 states that mileage reimbursement will be at the effective rate published by the Internal Revenue Service. The Internal Revenue Service has issued the 2013 standard mileage rate used to calculate the deductible costs of operating a personal car for business use. The rate of \$0.565 cents per mile is to be used for reimbursement requests for mileage incurred on or after January 1, 2013, subject to any changes to the published reimbursement rate by Internal Revenue Service.

The proposed Policy 007 also states that toll reimbursement will be at the effective date and rate of the relevant bridge crossing, based on the FasTrak rate.

Recommendation: Approve Policy 007: Mileage and Toll Reimbursement.



[DRAFT]

POLICY 007 - MILEAGE AND TOLL REIMBURSEMENT

MEA will reimburse employees for the use of their personal vehicle when used for MEA business.

Mileage reimbursement will be at the effective rate published by the Internal Revenue Service. The Internal Revenue Service has issued the 2013 standard mileage rate used to calculate the deductible costs of operating a personal car for business use. The rate of 56.5 cents per mile is to be used for reimbursement requests for mileage incurred on or after January 1, 2013, subject to any changes to the published reimbursement rate by Internal Revenue Service.

Toll reimbursement will be at the effective date and rate of the relevant bridge crossing, based on the FasTrak rate.

Mileage and toll reimbursement is meant to cover only those miles and tolls incurred above and beyond the employee's normal commute to his/her place of business. For example, if the normal commuting round trip is 20 miles, and the employee goes on a trip that covers 75 miles, only the incremental 55 miles are reimbursable. The number of days should also be taken into account. If the 75 miles in the above example were incurred over three business days, then the incremental reimbursable miles would be 15 ($75 - (3 * 20)$). If an employee works more than five days in a workweek, employees are entitled to full mileage and toll reimbursement from their home. For example, if an employee works Monday through Friday, then works at an event on Saturday, the full mileage and tolls to and from the event from the employee's home is reimbursable. However, if the employee worked Monday through Thursday, then works at an event on Saturday, only the incremental mileage is reimbursable.

Reimbursement requests should be submitted monthly and should indicate the points of travel and the miles eligible for reimbursement. Reimbursement requests that are submitted more than 90 days after the date from which the expense incurred will not be reimbursed.



July 11, 2013

TO: Marin Energy Authority Board

FROM: Sarah Gardner, Administrative Associate

RE: First Addendum to Second Agreement with Ellison, Schneider & Harris (Agenda Item #4 - C.8)

ATTACHMENT: First Addendum to Second Agreement with Ellison, Schneider & Harris

Dear Board Members:

SUMMARY: On January 29, 2013, the Marin Energy Authority and Ellison, Schneider & Harris entered into the First Agreement between the parties for legal and regulatory services. The Agreement stated that the maximum cost to MEA would not exceed \$10,000.

On April 1, 2013 MEA entered into the Second Agreement between the parties with a maximum cost not to exceed \$20,000.

The attached First Addendum amends the agreement with Ellison, Schneider & Harris such that the contract amount is increased by \$30,000 for a total amount not to exceed \$50,000.

Recommendation: Approve and execute the First Addendum to the Second Agreement by and between the Marin Energy Authority and Ellison, Schneider & Harris.



**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN THE
MARIN ENERGY AUTHORITY AND ELLISON, SCHNEIDER & HARRIS, LLP**

This FIRST ADDENDUM is made and entered into on July 11, 2013, by and between the MARIN ENERGY AUTHORITY, (hereinafter referred to as "MEA") and Ellison, Schneider & Harris (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MEA and Contractor entered into an agreement for regulatory services dated April 1, 2013 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated in an amount not to exceed \$20,000 for the regulatory and legal services as described within the scope therein; and

WHEREAS, the parties desire to amend the agreement to increase the contract amount by \$30,000 for a total amount not to exceed \$50,000.

NOW, THEREFORE, the parties agree to modify Section 4 and Exhibit B as set forth below.

AGREEMENT

1. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.
2. Section 4 and Exhibit B is hereby amended to read as follows:

Section 4, Maximum Cost to MEA:

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of \$50,000 including direct non-salary expenses.

Exhibit B – Fees and Payment Schedule

Ellison, Schneider & Harris, LLP will bill MEA by the hour and these hours will be payable on a monthly basis. The amount of any fees and costs billed under this agreement shall not exceed \$50,000.

IN WITNESS WHEREOF, the parties hereto have executed this First Addendum on the day first written above.

CONTRACTOR:

By: _____
Name: _____
Title: _____

MARIN ENERGY AUTHORITY:

By: _____
Name: _____
Title: _____

RESOLUTION NO. 2013-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN ENERGY AUTHORITY HONORING BOARD MEMBER ALEXANDRA COCK

WHEREAS, the Marin Energy Authority is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, Marin Energy Authority members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the Town of San Anselmo, the City of San Rafael, the City of Sausalito, the City of Richmond, the Town of Ross, and the Town of Tiburon; and

WHEREAS, the Town of Corte Madera executed the Joint Powers Agreement establishing membership in the Marin Energy Authority on December 6, 2011; and

WHEREAS, Alexandra Cock was appointed to the Corte Madera Town Council in 2011 and served enthusiastically until May 2013. She has been a dedicated public servant, a strong environmental leader with a focused business sense and advocating for the betterment of the Town of Corte Madera; and

WHEREAS, on January 5, 2012 Alexandra Cock was appointed to represent the Town of Corte Madera on the Marin Energy Authority Board of Directors; and

WHEREAS, Director Cock is commended for her work with the Town of Corte Madera as an advocate for Pension Reform and for her service as an alternate on the MCCMC Pension Committee; and

WHEREAS, Director Cock's dedication and devotion to the Marin Energy Authority was exemplified through her commitment to the Marin Energy Authority's Board of Directors and participation on the Ad Hoc Contract Committee; and

WHEREAS, Director Cock has always been a reliable team member and always offering a steady presence on the Board with her objective analysis of issues; and

WHEREAS, Director Cock's Board colleagues will sincerely miss her love for all things CCA, enthusiasm for all things fair and equitable, and thought-provoking questions; and

WHEREAS, the Marin Energy Authority Board of Directors and staff sincerely thank Director Cock for her passion and commitment to the agency, its goals and purpose.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority that the Marin Energy Authority Board and staff do hereby extend to Alexandra Cock our sincere and grateful appreciation for her dedicated service to the Marin Energy Authority Board of Directors, our congratulations on her future endeavors and our best wishes to her for continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 11th day of July 2013, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
Town of Corte Madera				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

CHAIR, MARIN ENERGY AUTHORITY BOARD

Attest:

SECRETARY, MARIN ENERGY AUTHORITY BOARD



July 11, 2013

TO: Marin Energy Authority Board

FROM: Greg Brehm, Resource Coordinator

RE: Power Purchase Agreements with Calpine Energy Services, L.P. for Power Supply Including Renewable Energy and Resource Adequacy (Agenda Item #6)

ATTACHMENTS:

- A. Edison Electric Institute Master Power Purchase and Sale Agreement
 - B. Edison Electric Institute Master Power Purchase and Sale Agreement Cover Sheet with Calpine Energy Services L.P.
 - C. Confirmation Letter Agreement with Calpine Energy Services L.P. for Renewable Energy Supply in 2014.
 - D. Confirmation Letter Agreement with Calpine Energy Services L.P. for Renewable Energy Supply in 2017-2026.
 - E. Confirmation Letter with Calpine Energy Services L.P. for Resource Adequacy Capacity in 2014.
 - F. Confirmation Letter with Calpine Energy Services L.P. for Resource Adequacy Capacity in 2017-2026
-

Dear Board Members:

Overview:

Through MEA's 2013 Open Season procurement process ("Open Season") for Renewable Energy ("RE"), MEA received 135 unique "Bucket 1" (in-state) project proposals. The subsequent evaluation of these proposals by staff and the Ad Hoc Contracts Committee yielded three shortlisted projects, including the Calpine Energy Services ("Calpine") offer of locally generated geothermal energy and resource adequacy ("RA") capacity – as a result of MEA's evaluative process, Calpine's RE proposal was ranked highest among all Open Season proposals based upon five primary criteria: location, portfolio fit, project viability, counterparty strength, contract terms and price. After finalizing the Open Season shortlist, staff initiated negotiations with Calpine for the purpose of developing a mutually agreeable power purchase agreement that would supply future renewable energy requirements of MCE customers. Requisite transaction documents, including pertinent commercial terms addressing the various energy products to be purchased/sold by the parties, were presented to and discussed with the Ad Hoc Contracts Committee, which provided oversight and input throughout the Open Season process. The resultant draft agreements, attached hereto, accurately reflect the intended terms and conditions of this proposed transaction, which would supplement MEA's existing RE supply portfolio with a highly desirable, locally situated geothermal resource.

Location & Project Viability:

The Geysers facility is an existing complex of 15 geothermal power plants totaling 725 MW located approximately 40 miles north of San Rafael in Sonoma and Lake Counties. The Geysers geothermal field has been supplying commercial electric power since 1960. Based on existing RE supply agreements, a portion of the Geysers generating capacity will become available in 2014. Calpine has 578 employees in Northern California, including 300 at the Geysers. For the past three years Calpine's local construction projects in Hayward and San Jose have employed more than 1,200 union workers under project labor agreements.

- Project will utilize a commercially proven Geothermal-based generating technology, which produces minimal air emissions. Lake County, downwind of The Geysers, is the only air district in California to have met all federal and state ambient air quality standards for the past 16 years.
- The American Lung Association of the Bay Area selected Calpine Corporation and its Geysers geothermal operation for the 2004 Clean Air Award for Technology Development.
- Calpine's recharge program resolves the communities' effluent water disposal problems by recycling water from nearby cities into injection wells, extending the life of the steam fields for years to come.

Portfolio Fit:

The energy delivery profile associated with the Geysers is highly desirable due to its predictability and availability – as a geothermal generating unit, the Geysers is expected to deliver electric energy in a pattern that minimally fluctuates from hour to hour (throughout the year); this delivery profile substantially differs from other prominent RE technologies, such as solar and wind generation, which tend to demonstrate significant variability in hourly, daily and seasonal energy production. For planning purposes, integrating a geothermal generating resource in the MCE supply portfolio is relatively simple. Other portfolio benefits include the project's exceptionally low emission rate, and the developer's deep experience and strong track record in operating similar projects. Renewable energy volumes produced by the facility will complement MEA's existing RE and RA supply. The timing of deliveries will help replace the planned reduction in renewable energy deliveries under the SENA agreement. Additional information is provided below regarding the prospective counterparty.

Counterparty Strength:**Calpine Energy Services L.P. / GEYSERS**

- Calpine Energy Services, L.P. ("CES") and Geysers Power Company ("GPC") are both wholly owned subsidiaries of Calpine Corporation.
- Local offices in Dublin, CA, headquartered in Houston, Texas
- Calpine Corp. is rated B+ by S&P, and B1 by Moody's
- Calpine Corporation was founded in 1984, and is a major U.S. power company, capable of delivering more than 27,321 MW of clean, reliable and fuel-efficient electricity, with another 1,163 MW under construction.
- The company develops, constructs, owns and operates a modern and flexible fleet of low-carbon, renewable geothermal power plants as well as natural gas-fired fleet (***Natural Gas generation is not part of this contract***). Using advanced technologies, Calpine generates reliable and environmentally responsible electricity for its customers.

**Contract Terms:**

In addition to the RE and RA capacity included in these contracts, Calpine is able to offer additional products and services which MEA may choose to utilize as it phases out its mid-term “full requirements” contract with Shell Energy North America. Staff chose to use an industry standard contract, the Edison Electric Institute (EEI) Master Agreement and associated confirmation letters for each of the products under this contract to maximize contracting flexibility. MEA’s standard PPA terms have been incorporated into the EEI agreement (through a cover sheet, which notes specific changes to the master EEI agreement that will apply under this transaction and the confirmation agreements) to the extent possible and applicable.

The EEI master agreement was developed through industry-wide collaboration with the National Energy Marketers Association (and others) and is widely used in the electric utility industry as the contractual basis for various energy transactions. The agreement contains the essential terms that govern forward purchases and sales of wholesale electricity, and is the same agreement MEA used in contracting with Shell. Use of an industry-vetted Master Contract streamlines the process of establishing a trading relationship, provides credit provisions, standardizes product definitions, and allows counterparties to focus on the transaction’s commercial elements, e.g., price, quantity, location, and duration.

As a result of the Open Season process and related contract negotiations, Staff has negotiated mutually agreeable terms with Calpine to address the following items:

1. Draft Power Purchase Agreement (EEI Master Agreement) – this agreement establishes a contractual relationship between Calpine and MEA, enabling the parties to transact for specific energy products.
2. Short term (2014) 3 MW renewable energy and RA capacity confirmation – this agreement will provide MCE customers with necessary RE and RA capacity, filling projected deficits that would otherwise occur during the 2014 calendar year.
3. Long term (2017 to 2026) 10 MW renewable energy and RA capacity confirmation – this agreement will provide MCE customers with necessary RE and RA capacity over a longer-term planning horizon, filling projected future open positions for RE and RA capacity.

Contract Overview:

- Project: Existing Geothermal project
Provides 3 to 10 MWs from the 725 MW facility with a 98% capacity factor
- Project location: (Sonoma and Lake Counties), California
- Guaranteed commercial operation date: January 1, 2014
- Contract terms: Short term 2014, 3 MW
Long term 2017 to 2026, 10 MW

- Delivery profile: Base Load
- Expected annual energy production: approximately 26,000 – 87,600 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production (97% of projected annual deliveries)
- Energy price: fixed energy prices applicable to each year of contract
- No credit/collateral obligations for MEA

Summary:

The Geysers project is a good fit for MEA's resource portfolio based on the following considerations:

- The project size and expected energy production will support the future renewable energy requirements of MCE customers.
- Timing of initial energy deliveries under the agreement is aligned with planned reduction in renewable energy deliveries under SENA agreement.
- The project is being operated by an experienced team, which is currently supplying power from various projects to multiple counterparties.
- The project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1").
- The project is highly viable and has been producing power since 1960.
- Energy from the project is competitively priced.

Recommendation: Authorize approval of five agreements as follows:

1. Edison Electric Institute Master Power Purchase and Sale Agreement Cover Sheet with Calpine Energy Services L.P.
2. Confirmation Letter Agreement with Calpine Energy Services L.P. for Renewable Energy Supply in 2014.
3. Confirmation Letter Agreement with Calpine Energy Services L.P. for Renewable Energy Supply in 2017-2026.
4. Confirmation Letter Agreement with Calpine Energy Services L.P. for Resource Adequacy Capacity in 2014.
5. Confirmation Letter Agreement with Calpine Energy Services L.P. for Resource Adequacy Capacity in 2017-2026.

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“_____” or “Party A”)

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

Name (“Counterparty” or “Party B”)

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions ☐ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: _____ Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

☐ Cross Default for Party B:

☐ Party B: _____ Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A

☐ Option B Specify: _____

☐ Option C Specify: _____

(b) Credit Assurances:

☐ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☐ Not Applicable

☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

- ☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: _____
- ☐ Option C Specify: _____

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:
Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
- ☐ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable
- ☐ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) 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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “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 issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable 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- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) 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;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

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

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

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

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

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

☐ Into _____, Seller’s Daily Choice

☐ Firm (LD)

☐ Firm (No Force Majeure)

☐ System Firm

(Specify System: _____)

☐ Unit Firm

(Specify Unit(s): _____)

☐ Other _____

☐ Transmission Contingency (If not marked, no transmission contingency)

☐ FT-Contract Path Contingency ☐ Seller ☐ Buyer

☐ FT-Delivery Point Contingency ☐ Seller ☐ Buyer

☐ Transmission Contingent ☐ Seller ☐ Buyer

☐ Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

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Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

MASTER POWER PURCHASE AND SALE AGREEMENT COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Calpine Energy Services, L.P. ("Calpine" or "Party A") Marin Energy Authority ("MEA" or "Party B")

All Notices:

Street: 717 Texas Avenue, Suite 1000

City: Houston, TX Zip: 77002

Attn: Contract Administration

Facsimile: (713) 830-8751

CommodityContracts@calpine.com

Duns: 16-966-8212

Federal Tax ID Number: 77-0212977

All Notices:

Street: 781 Lincoln Ave., Suite #320

City: San Rafael Zip: 94901

Attn: Contract Administration

Phone: (415) 464-6010

Facsimile: (415) 459-8095

Duns: 829602338

Federal Tax ID Number: 26-4300997

With copy to:

4160 Dublin Blvd., Suite 100

Dublin, CA 94568

Attn: Legal Department

Facsimile: (925) 470-9608

Invoices:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8749

Invoices:

Attn: Sarah Gardner, Administrative Associate

Phone: (415) 464-6028

Facsimile: (415) 459-8095

Confirmations:

Attn: Confirmations Department

Phone: (713) 830-8723

Facsimile: (713) 830-8868

Confirmations:

Attn: Greg Brehm, Resource Coordinator

Phone: (415) 464-6037

Facsimile: (415) 459-8095

Scheduling:

Attn: Scheduling

Phone: (713) 830-8353

Facsimile: (713) 830-8749

Scheduling:

Attn: Greg Brehm, Resource Coordinator

Phone: (415) 464-6037

Facsimile: (415) 459-8095

Payments:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8749

Payments:

Attn: Sarah Gardner, Administrative Associate

Phone: (415) 464-6028

Facsimile: (415) 459-8095

Wire Transfer:

BNK: Union Bank, N.A.

ABA: [REDACTED]

ACCT: [REDACTED]

Wire Transfer:

BNK: River City Bank

ABA:

ACCT:

Credit and Collections:

Attn: Director of Corporate Credit
Phone: (713) 332-5257
Facsimile: (713) 570-4764

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: Risk Management Counsel
Facsimile: (713) 830-8751

with copy to:

Attn: Chief Legal Officer
Facsimile: (832) 325-1508

and

Attn: Assistant General Counsel
Facsimile: (925) 479-9608

Credit and Collections:

Attn: Emily Goodwin, Internal Operations Coord.
Phone: (415) 464-6035
Facsimile: (415) 459-8095

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: Greg Stepanicich
Phone: (415) 421-8484
Facsimile: (415) 459-8095

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff: Rate Schedule #1 Dated: Sept. 21, 2000 Docket Number: ER-00-3562-000

Party B Tariff Tariff: _____ Dated: _____ Docket Number: _____

Article Two

Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default;
Remedies

☒ Cross Default for Party A:

☐ Party A: Cross Default Amount:

☒ Other Entity: Calpine Corp. Cross Default Amount: \$100,000,000.00

☒ Cross Default for Party B:

☒ Party B: Cross Default Amount: \$500,000.00

☐ Other Entity: Cross Default Amount:

5.6 Closeout Setoff

☒ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)

Article 8

Credit and Collateral
Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☒ Option A

☐ Option B Specify:

☐ Option C Specify: _____

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, the provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Guarantor's Credit Rating falls below _____ from S&P and _____ from Moody's or if Party B's Guarantor is not rated by either S&P or Moody's
- ☐ Other:
Specify:

(e) Guarantor for Party B:

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
☒ Option B Specify: Calpine Corporation
☐ Option C Specify: as available

(b) Credit Assurances:

- ☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, the provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below ____ from S&P and ____ from Moody's or if Party A's Guarantor is not rated by either S&P or Moody's
- ☐ Other:

Specify:

(e) Guarantor for Party A: Not Applicable.

Guarantee Amount: N/A

Article 10

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

Other Changes: Specify, if Any: See "Other Changes" Attached Hereto

**“OTHER CHANGES” TO EEI STANDARDIZED
MASTER POWER PURCHASE AND SALE AGREEMENT**

ARTICLE ONE: GENERAL DEFINITIONS

Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”: “The Parties hereby agree and acknowledge that the members of Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”.

Section 1.12 is amended by deleting the word “issues” and replacing it with the word “issuer”.

Section 1.27 is amended by adding at the end of the first sentence “; provided that a Party may only transfer the Letter of Credit to any person or entity succeeding to all or substantially all of the assets of such Party.”

Section 1.50 (Recording) is hereby deleted in its entirety.

Section 1.51 is amended by (i) adding the phrase “for delivery” immediately before the phrase “at the Delivery Point” in the second line and (ii) deleting the phrase “at Buyer's option” from the fifth line and replacing it with the phrase “absent a purchase”.

Section 1.53 is amended by (i) deleting the phrase “at the Delivery Point” from the second line, and (ii) deleting the phrase “at Seller’s option” from the fifth line and replacing it with the phrase “absent a sale”.

ARTICLE TWO: TRANSACTIONS TERMS AND CONDITIONS

Section 2.1 is amended by deleting “orally or, if expressly required by either Party with respect to a particular Transaction,” in the 2nd line.

In Section 2.4, delete “either orally or” after “agreed to” in the 7th line.

Section 2.5 is hereby deleted in its entirety.

The following shall be added as Section 2.6:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

- (a) **Market Disruption.** If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:

The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.

If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.

If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the

substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.

If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:

- 1) If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
- 2) If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
- 3) If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

(a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day; (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

"RTO Transaction" means a Transaction in which the Price Source is an RTO.

"Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

- (b) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.
- (c) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.1(a) is amended by changing "three (3) Business Days" to "five (5) Business Days".

Section 5.1(d) is amended by adding the following after "Bankrupt": ", provided, however, if the presentation of an involuntary petition for the winding-up or liquidation of a party (an "Involuntary Proceeding") is commenced, such Involuntary Proceeding shall not be a Default in respect of that party unless the Involuntary Proceeding has not been withdrawn, dismissed, discharged, stayed or restrained within 60 days of its commencement and in such event the other party shall be entitled to exercise its rights and remedies under this Agreement in respect thereof;".

Section 5.1(g) is amended by (i) adding "after the Effective Date of this Agreement" after the words "occurrence and continuation" and (ii) deleting the phrase ", or becoming capable at such time of being declared," after the word "becoming" and before the word "immediately" in the eighth and ninth lines.

Section 5.2 is amended to reverse the placement of "(i)" and "to" in the first sentence.

Section 5.2 is amended to delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable)." The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable), and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non- Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

In Section 5.7, delete "(a)" and the phrase "or (b) a Potential Event of Default" in the second line.

ARTICLE SEVEN: LIMITATIONS

Section 7.1 shall be amended by: (a) deleting “Except as set forth herein” from the first sentence and “Unless expressly herein provided” from the fifth sentence and (b) adding “Notwithstanding anything in this Agreement to the contrary” to the beginning of the fifth sentence, and “set forth in this Agreement” after “indemnity provision” and before “or otherwise”, also in the fifth sentence.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

Section 8.1(a) is amended by adding the phrase “, provided however, for the purposes of this (i) and (ii), if Party B’s financial statements are publicly available electronically, then Party B shall be deemed to have met this requirement” after the phrase “a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter”.

Section 8.2(a) is amended by adding the phrase “, provided however, for the purposes of this (i) and (ii), if Party A’s financial statements are publicly available electronically, then Party A shall be deemed to have met this requirement” after the phrase “a copy of Party A’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter”.

ARTICLE TEN: MISCELLANEOUS

Section 10.4 is amended to add the phrase “unless a Claim is due to such Party’s gross negligence, willful misconduct or bad faith” at the end of the first sentence of Section 10.4.

In Section 10.5, in clause (ii) thereof replace the words “affiliate” and “affiliate's” with, respectively, “Affiliate” and “Affiliate's”, and in clause (iii) thereof immediately after the words “substantially all of the assets” insert the words “of such Party and”.

In Section 10.5, delete the phrase “which consent may be withheld in the exercise of its sole discretion” in the first line and replace it with “which consent shall not be unreasonably withheld.”

In Section 10.6 change “State of New York” to “State of California” and add the following after the last line: “FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, OR IF SUCH FEDERAL COURTS DO NOT HAVE JURISDICTION, TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS OF THE STATE OF CALIFORNIA LOCATED IN SAN FRANCISCO, CALIFORNIA, AND EACH PARTY EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

Section 10.8 is amended by adding the following to the last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11, (iv) Waiver of Jury Trial provisions, if applicable, (v) Arbitration provisions, if applicable, (vi) the obligation of either Party to make payments hereunder, (vii) Section 10.6, and (viii) Section 10.13 shall also survive the termination of the Agreement or any Transaction.”.

Section 10.11 Confidentiality is amended to read in its entirety as follows:

“If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, the contents of the Transactions and all other documents relating to this Agreement, if any, and any information made available by a Party and/or any guarantor of a Party (“Disclosing Party”) to the other Party (“Non-Disclosing Party”) with respect to this Agreement or any Transaction, if any, are confidential and shall not be disclosed to any third party, except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, request from a regulatory body, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the Disclosing Party, if any, in making such disclosure, or (iv) as may be furnished to the Non-Disclosing Party’s Affiliates, and to each of such person’s auditors, attorneys, advisors or lenders which are required

Version 2.1 (modified 4/25/00)

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to keep the information that is disclosed in confidence. Notwithstanding the foregoing, a Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq.). Party B will notify Party A in writing promptly upon receipt of any request for information regarding the Master Agreement and/or any Confirmations executed in connection therewith pursuant to the California Public Records Act (Government Code Section 6250 et seq.).”

The following shall be added as Section 10.12:

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

The following new Section shall be added as Section 10.13: Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 19, 2008 (the "Joint Power Agreement") and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement or any of the Transactions.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

The following definition is hereby added to Schedule P:

“CAISO Firm” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator (“CAISO”) Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable

tariff and protocol provisions of the CAISO tariff as amended from time to time, for which the only excuse for failure to deliver or receive is “an Uncontrollable Force” as defined in the CAISO Tariff.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Calpine Energy Services, L.P.

By: _____

Name: _____

Title: _____

Date : _____

Marin Energy Authority

By: _____

Name: _____

Title: _____

Date: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.



CALPINE

Calpine Energy Services, L.P.

717 Texas Avenue, Suite 1000

Houston, Texas 77002

(713) 830-8333

Fax: (713) 830-8868

CONFIRMATION LETTER

"CONFIDENTIALITY NOTICE: The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents."

Date: [REDACTED], 2013
To: MARIN ENERGY AUTHORITY
Attention: Confirmation Department
Fax No.: (415) 459-8095
From: Calpine Energy Services, L.P.
Re: Calpine Deal Number: [XX]
Calpine Agreement Number: [XX]

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the "Transaction") agreed upon by Buyer and Seller as of the Trade Date specified below. This Confirmation supplements, forms a part of, and is subject to that certain Master Power Purchase and Sale Agreement dated [REDACTED], 2013] between Buyer and Seller, as may have been previously amended, including by the Master Power Purchase and Sale Agreement Cover Sheet dated [REDACTED], 2013] (the "Master Agreement"). All provisions contained in or incorporated by reference in the Master Agreement will govern this Confirmation except as expressly modified herein. The Master Agreement shall be governed by the laws of the state governing the Master Agreement as therein set forth regardless of the law governing this Confirmation as set forth below. Subject to any contrary provisions in the Master Agreement, in the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

We confirm the following terms of our Transaction:

Buyer: MARIN ENERGY AUTHORITY
781 Lincoln Ave. Suite 320
San Rafael, CA 94901
Attn: Internal Operations, Tel (415) 464-6035

Seller: Calpine Energy Services, L.P.
717 Texas Avenue, Suite 1000,
Houston, Texas 77002
Attn: Contract Administration, Tel: (713) 830-8751

and

Calpine Energy Services, L.P.

4160 Dublin Boulevard, Suite 100,
Dublin, California
Attn: Rosemary Antonopoulos, Assistant General Counsel
Tel: (925) 557-2283

Trade Date: [REDACTED], 2013]

Contract Period: January 1, 2014 through December 31, 2014, inclusive

Price: For each MWh of Energy and Renewable Energy Credit: Buyer shall pay to Seller a fixed price of \$[REDACTED]/MWh.

Product: Renewable energy which meets the criteria for section 399.16(b)(1) of the California Public Utilities Code, comprised of: (1) Unit Firm energy and (2) Renewable Energy Credits generated by the Project and transferred by Seller through a WREGIS Certificate to Buyer under this Confirmation.

Contract Quantity: 3 MW 7 X 24 energy delivery

Energy and REC Quantity: Total maximum MWhs 26,280

Delivery Point: NP15 EZ Gen Hub

Renewable Energy

Credit Certificates: To provide evidence of Green Attributes, Seller shall transfer to Buyer the Renewable Energy Credits to Buyer's WREGIS account(s) within fifteen (15) Business Days after WREGIS creates certificates from each month's meter data (approximately four months after flow under current WREGIS operating conditions). REC deliveries will be made by transfer of WREGIS Certificates to Buyer's WREGIS account pursuant to WREGIS Operating Rules. Seller shall, at its option, transfer the WREGIS Certificate using forward certificated transfer or any other transfer permitted under the WREGIS Operating Rules. With respect to REC deliveries, Product flow shall be considered the month in which the WREGIS Certificates are created by WREGIS under current operating conditions.

Scheduling: Pursuant to WECC and CAISO requirements to the Delivery Point. Seller Scheduling Contact: (713)830-8684; Buyer Scheduling Contact: (415) 464-6010.

ADDITIONAL TERMS:

- a) 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.

- b) Seller shall agree to reasonably assist Buyer with Buyer's California Renewables Portfolio Standard Program compliance filings as requested by Buyer. In connection with the foregoing, neither Seller nor its affiliates shall be required to (i) expend or incur any legal costs (either internal or external) in providing such assistance or (ii) prepare or defend a filing or otherwise advocate on behalf of Buyer.
- c) 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.
- d) No-Fault Termination. If (1) Seller is not able to generate electric energy at the Project due to a Forced Outage or Force Majeure or economic outage, or (2) Seller's representations and warranties set forth in Section (a) above and/or in the definition of Green Attributes of this Confirmation are no longer true due to a change in law or otherwise and cannot be cured by Seller's commercially reasonable efforts, then either Party shall have the right to terminate this Confirmation upon delivery of notice to the other Party and neither Party shall owe or be liable to the other Party for any payment for damages or for a termination payment nor shall any such termination constitute an Event of Default.
- e) Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that the RECs sold hereunder can be transferred to Buyer utilizing WREGIS. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules effective as of the date of this Confirmation regarding the certification and transfer of RECs sold hereunder to Buyer. During the Contract Period, Seller shall have in-place, or shall submit documentation to establish, an account with WREGIS. Seller shall transfer RECs to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall be responsible for all customary expenses associated with WREGIS Certificate issuance fees and utilizing WREGIS to transfer the RECs to Buyer, or its designee, except for any costs incurred by Buyer with respect to Buyer's registration with WREGIS and Buyer's WREGIS account.
- f) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- g) Because WREGIS Certificates will only be created for whole MWh amounts of output generated, any fractional MWh amounts will be carried forward during the Contract Period until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- h) Seller shall be responsible, at its sole expense, for validating, adjusting, and disputing

data with WREGIS so that the data from the Project's meter(s) corresponds with the quantity of RECs conveyed hereunder. Upon request Seller shall provide Buyer with copies of all correspondence or documentation to or from WREGIS with respect to any such validation, adjustment, or dispute.

- i) Without limiting Seller's obligations, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS or the California Independent System Operator, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. If WREGIS changes the WREGIS Operating Rules after the Confirmation Trade Date or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties promptly shall modify this Agreement as reasonably required to preserve the intended economic benefits of this transaction for both Parties, and so cause and enable Seller to transfer to Buyer's WREGIS Account the RECs sold to Buyer hereunder.
- j) Transfer of RECs: 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.
- k) Tracking of RECs in WREGIS: 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.
- l) Notwithstanding anything else in this Confirmation, Buyer acknowledges and agrees that the sale of Energy and RECs by Seller from the Project is nonexclusive.
- m) This Confirmation shall not be effective unless and until that certain Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated as of even date herewith has been fully executed by the parties thereto and the Transaction contemplated thereunder has become effective.

ADDITIONAL DEFINITIONS:

"Agreement" or "agreement" means this Confirmation.

"commercially reasonable efforts" shall be limited and capped to Seller incurring an aggregate total incremental capital expenditure and expenses of \$10,000.

"California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bills 1038 and 1078 and 2 (1X) codified in California Public Utilities Code Sections 399.11 et seq. and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"CEC" means the California Energy Commission, or any successor entity.

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

“Delivery Term” means January 1, 2014 through December 31, 2014, inclusive, and as to the recordation of the RECs, the continued period during which WREGIS creates the applicable WREGIS Certificates as described herein under Renewable Energy Credit Certificates.

The definition of “Force Majeure” set forth in the Master Agreement with respect to RECs to be transferred hereunder shall include events of Force Majeure that temporarily disrupt or suspend the operation or functioning of WREGIS preventing the transfer of RECs between accounts.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of

The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project 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 Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas 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 Project.

“Green Tag Purchaser” means Buyer.

“NERC” means the North American Electric Reliability Corporation.

“Project” means one or more of the geothermal power plants owned or controlled by Seller and located in Lake and Sonoma Counties, California.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Deal Number:

“Renewable Energy Credit” or “REC” has the meaning set forth in the California Public Utilities Code Section 399.12 and CPUC Decision 08-08-028, as may be amended or supplemented from time to time or as further supplemented by applicable law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Project which shall be qualified and certified as an ERR.

“WECC” means the Western Electricity Coordinating Council or its successor.

“WREGIS” means Western Renewable Energy Generating Information System.

“WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated by applicable law as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, as amended from time to time.

Notwithstanding anything in the Master Agreement to the contrary, this Confirmation will become effective only upon its execution by both Parties. Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation and returning it to us via the above-referenced facsimile number.

Calpine Energy Services, L.P.

By: _____

Name: _____

Title: _____

Date: _____

MARIN ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____



CALPINE

Calpine Energy Services, L.P.

717 Texas Avenue, Suite 1000

Houston, Texas 77002

(713) 830-8333

Fax: (713) 830-8868

CONFIRMATION LETTER

"CONFIDENTIALITY NOTICE: The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents."

Date: [REDACTED], 2013
To: MARIN ENERGY AUTHORITY
Attention: Confirmation Department
Fax No.: (415) 459-8095
From: Calpine Energy Services, L.P.
Re: Calpine Deal Number: [XX]
Calpine Agreement Number: [XX]

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the "Transaction") agreed upon by Buyer and Seller as of the Trade Date specified below. This Confirmation supplements, forms a part of, and is subject to that certain Master Power Purchase and Sale Agreement dated [REDACTED], 2013] between Buyer and Seller, as may have been previously amended, including by the Master Power Purchase and Sale Agreement Cover Sheet dated [REDACTED], 2013] (the "Master Agreement"). All provisions contained in or incorporated by reference in the Master Agreement will govern this Confirmation except as expressly modified herein. The Master Agreement shall be governed by the laws of the state governing the Master Agreement as therein set forth regardless of the law governing this Confirmation as set forth below. Subject to any contrary provisions in the Master Agreement, in the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

We confirm the following terms of our Transaction:

Buyer: MARIN ENERGY AUTHORITY
781 Lincoln Ave. Suite 320
San Rafael, CA 94901
Attn: Internal Operations, Tel (415) 464-6035

Seller: Calpine Energy Services, L.P.
717 Texas Avenue, Suite 1000,
Houston, Texas 77002
Attn: Contract Administration, Tel: (713) 830-8751

and

Calpine Energy Services, L.P.

4160 Dublin Boulevard, Suite 100,
Dublin, California
Attn: Rosemary Antonopoulos, Assistant General Counsel
Tel: (925) 557-2283

Trade Date: [REDACTED], 2013]

Contract Period: January 1, 2017 through December 31, 2026, inclusive

Price: For each MWh of Energy and Renewable Energy Credit: Buyer shall pay to Seller a fixed price of \$[REDACTED]/MWh.

Product: Renewable energy which meets the criteria for section 399.16(b)(1) of the California Public Utilities Code, comprised of: (1) Unit Firm energy and (2) Renewable Energy Credits generated by the Project and transferred by Seller through a WREGIS Certificate to Buyer under this Confirmation.

Contract Quantity: 10 MW 7 X 24 energy delivery

Delivery Point: NP15 EZ Gen Hub

Renewable Energy Credit Certificates: To provide evidence of Green Attributes, Seller shall transfer to Buyer the Renewable Energy Credits to Buyer's WREGIS account(s) within fifteen (15) Business Days after WREGIS creates certificates from each month's meter data (approximately four months after flow under current WREGIS operating conditions). REC deliveries will be made by transfer of WREGIS Certificates to Buyer's WREGIS account pursuant to WREGIS Operating Rules. Seller shall, at its option, transfer the WREGIS Certificate using forward certificated transfer or any other transfer permitted under the WREGIS Operating Rules. With respect to REC deliveries, Product flow shall be considered the month in which the WREGIS Certificates are created by WREGIS under current operating conditions.

Scheduling: Pursuant to WECC and CAISO requirements to the Delivery Point. Seller Scheduling Contact: (713)830-8684; Buyer Scheduling Contact: (415) 464-6010.

ADDITIONAL TERMS:

- a) 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.

- b) Seller shall agree to reasonably assist Buyer with Buyer's California Renewables Portfolio Standard Program compliance filings as requested by Buyer. In connection with the foregoing, neither Seller nor its affiliates shall be required to (i) expend or incur any legal costs (either internal or external) in providing such assistance or (ii) prepare or defend a filing or otherwise advocate on behalf of Buyer.
- c) 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.
- d) No-Fault Termination. If (1) Seller is not able to generate electric energy at the Project due to a Forced Outage or Force Majeure or economic outage, or (2) Seller's representations and warranties set forth in Section (a) above and/or in the definition of Green Attributes of this Confirmation are no longer true due to a change in law or otherwise and cannot be cured by Seller's commercially reasonable efforts, then either Party shall have the right to terminate this Confirmation upon delivery of notice to the other Party and neither Party shall owe or be liable to the other Party for any payment for damages or for a termination payment nor shall any such termination constitute an Event of Default.
- e) Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that the RECs sold hereunder can be transferred to Buyer utilizing WREGIS. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules effective as of the date of this Confirmation regarding the certification and transfer of RECs sold hereunder to Buyer. During the Contract Period, Seller shall have in-place, or shall submit documentation to establish, an account with WREGIS. Seller shall transfer RECs to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall be responsible for all customary expenses associated with WREGIS Certificate issuance fees and utilizing WREGIS to transfer the RECs to Buyer, or its designee, except for any costs incurred by Buyer with respect to Buyer's registration with WREGIS and Buyer's WREGIS account.
- f) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- g) Because WREGIS Certificates will only be created for whole MWh amounts of output generated, any fractional MWh amounts will be carried forward during the Contract Period until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- h) Seller shall be responsible, at its sole expense, for validating, adjusting, and disputing data with WREGIS so that the data from the Project's meter(s) corresponds with the quantity of RECs conveyed hereunder. Upon request Seller shall provide Buyer with copies of all correspondence or documentation to or from WREGIS with respect to any

such validation, adjustment, or dispute.

- i) Without limiting Seller's obligations, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS or the California Independent System Operator, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. If WREGIS changes the WREGIS Operating Rules after the Confirmation Trade Date or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties promptly shall modify this Agreement as reasonably required to preserve the intended economic benefits of this transaction for both Parties, and so cause and enable Seller to transfer to Buyer's WREGIS Account the RECs sold to Buyer hereunder.
- j) Transfer of RECs: 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.
- k) Tracking of RECs in WREGIS: 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.
- l) Notwithstanding anything else in this Confirmation, Buyer acknowledges and agrees that the sale of Energy and RECs by Seller from the Project is nonexclusive.
- m) This Confirmation shall not be effective unless and until that certain Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated as of even date herewith has been fully executed by the parties thereto and the Transaction contemplated thereunder has become effective.

ADDITIONAL DEFINITIONS:

"Agreement" or "agreement" means this Confirmation.

"commercially reasonable efforts" shall be limited and capped to Seller incurring an aggregate total incremental capital expenditure and expenses of \$10,000 per calendar year of the Delivery Term.

"California Renewables Portfolio Standard" means the renewable energy program and policies established by Senate Bills 1038 and 1078 and 2 (1X) codified in California Public Utilities Code Sections 399.11 et seq. and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"CEC" means the California Energy Commission, or any successor entity.

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

“Delivery Term” means January 1, 2017 through December 31, 2026, inclusive, and as to the recordation of the RECs, the continued period during which WREGIS creates the applicable WREGIS Certificates as described herein under Renewable Energy Credit Certificates.

The definition of “Force Majeure” set forth in the Master Agreement with respect to RECs to be transferred hereunder shall include events of Force Majeure that temporarily disrupt or suspend the operation or functioning of WREGIS preventing the transfer of RECs between accounts.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of

The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project 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 Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas 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 Project.

“Green Tag Purchaser” means Buyer.

“NERC” means the North American Electric Reliability Corporation.

“Project” means one or more of the geothermal power plants owned or controlled by Seller and located in Lake and Sonoma Counties, California.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Deal Number:

“Renewable Energy Credit” or “REC” has the meaning set forth in the California Public Utilities Code Section 399.12 and CPUC Decision 08-08-028, as may be amended or supplemented from time to time or as further supplemented by applicable law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Project which shall be qualified and certified as an ERR.

“WECC” means the Western Electricity Coordinating Council or its successor.

“WREGIS” means Western Renewable Energy Generating Information System.

“WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated by applicable law as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, as amended from time to time.

Notwithstanding anything in the Master Agreement to the contrary, this Confirmation will become effective only upon its execution by both Parties. Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation and returning it to us via the above-referenced facsimile number.

CALPINE ENERGY SERVICES, L.P.

By: _____

Name: _____

Title: _____

Date: _____

MARIN ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

CONFIRMATION FOR RESOURCE ADEQUACY CAPACITY PRODUCT FOR CAISO RESOURCES

This confirmation letter (“Confirmation”), confirms the mutual understanding and agreement (“Transaction”) between Calpine Energy Services, L.P. (“Seller”) and Marin Energy Authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of _____ in which Seller agrees to provide to Buyer the right to the Product (as defined herein). This Transaction and Confirmation are being provided pursuant to and in accordance with the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of _____ (collectively the “Master Agreement”), along with the Cover Sheet and any amendments and annexes, including the EEI Collateral Annex, thereto (together with the Master Agreement, collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms not otherwise defined in this Confirmation have the meanings specified in the EEI Agreement or Tariff (as defined herein). To the extent that this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions

- 1.01 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.02 “Availability Incentive Payments” has the meaning specified in the Tariff.
- 1.03 “Availability Standards” has the meaning specified in the Tariff.
- 1.04 “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.05 “CAISO” means the California Independent System Operator Corporation, or its successor entity.
- 1.06 “CAISO Control Area” has the meaning specified in the Tariff.
- 1.07 “CAISO Controlled Grid” has the meaning specified in the Tariff.
- 1.08 “Capacity Attributes” means any and all current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services and ramp up or ramp down at a given rate), certificates, tags, credits, howsoever entitled (including any accounting construct), in each case which are counted toward any resource adequacy requirements attributed to or associated with the Unit(s) throughout the Delivery Period and are consistent with the operational limitations of such Unit(s).
- 1.09 “Capacity Replacement Price” means the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity. For purposes of the definition of “Replacement Price” in Section 1.51 of the Master Agreement, “Capacity Replacement

Price” shall be deemed to be the “Replacement Price” for the Agreement.

- 1.10 “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.11 “Confirmation Effective Date” means the date that both this Confirmation and that certain Confirmation Letter between the Parties dated as of even date herewith have been fully executed by the Parties.
- 1.12 “Contingent Firm RA Product” has the meaning specified in Section 3.3 hereof.
- 1.13 “Contract Price” means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape Factor for such period.
- 1.14 “Contract Quantity” means the total Unit Contract Quantity of all Units.
- 1.15 “CPUC” means the California Public Utilities Commission.
- 1.16 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-06-031, 07-06-029, 08-06-031, 09-06-028 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, and/or subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18 “Designated RA Capacity” means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable LAR Showings, in each case as determined by the CAISO pursuant to the Tariff, or by an LRA having jurisdiction. Designated RA Capacity shall include those attributes associated with the capacity identified in Sections 2 and 3 hereof. For each Monthly Delivery Period, a Unit’s Designated RA Capacity shall be equal to the product of (x) the Unit’s RA Capacity, after reflecting adjustments for Outages, if any, required by the CAISO Tariff, or by an LRA having jurisdiction, and (y) the Unit’s Prorated Percentage of Unit Factor, provided that the total amount of Designated RA Capacity from all Units shall not exceed the Contract Quantity.
- 1.19 “Firm RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.20 “GADS” means the Generating Availability Data System, or its successor.
- 1.21 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff or by another LRA having jurisdiction over the LSE. LAR may also

be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.23 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area that can be counted toward LAR and are consistent with the operational limitations of such Unit, but exclusive of any RAR Attributes. For clarity, it should be understood that the LAR Attributes associated with a Unit by virtue of its location or point of electrical interconnection may change as the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas and such change will not result in a change in payments made pursuant to this transaction.
- 1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.25 “LRA” means Local Regulatory Authority, as defined in the Tariff.
- 1.26 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.27 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.28 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 “Monthly RA Capacity Payment” has the meaning specified in Section 4.4 hereof.
- 1.30 “NERC” means the North American Electric Reliability Council, or its successor.
- 1.31 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.32 “Non-Availability Charges” has the meaning specified in the Tariff.
- 1.33 “Non-Excusable Event” means Seller’s (a) failure to perform its obligations under this Confirmation due to Seller’s negligence, or the negligence of the owner, operator, or SC of a Unit, (b) failure to perform its obligations under this Confirmation, including, without limitation, the failure to cause the owner, operator or SC of a Unit to comply with the operations and maintenance standards specified in Section 8.2.(f), or (c) failure to comply, or failure to cause the owner, operator or SC of the Units to comply, with the terms of the Tariff with respect to the Units providing RAR Attributes and LAR Attributes, as applicable; provided that in each case such failure results or will result in the CPUC not allowing Buyer to count the applicable amount of Unit Contract Quantity

towards its RAR.

- 1.34 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of such Unit consistent with the Tariff.
- 1.35 “Planned Outage” has the meaning in the Tariff, and includes a planned, scheduled, or any other Outage for the routine repair or maintenance of a Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.36 “Price Shape Factor” means the Price Shape Factor specified in the Monthly Payment Price Shape Factor Table in Section 4.4 hereof.
- 1.37 “Product” has the meaning specified in Section 3 hereof.
- 1.38 “Prorated Percentage of Unit Factor” means the percentage of RA Capacity, as specified in Section 2 hereof, from a Unit that is dedicated to Buyer.
- 1.39 “RA Availability” means, for each Unit, expressed as a percentage, (a) the Designated RA Capacity for a Monthly Delivery Period divided by (b) the Unit Contract Quantity, as reduced according to Section 4.3 if applicable, provided that a Unit’s RA Availability shall not exceed 1.00.
- 1.40 “RA Availability Adjustment” has the meaning specified in Section 4.5 hereof.
- 1.41 “RA Capacity” means the qualifying and deliverable capacity of a Unit for RAR and LAR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws.
- 1.42 “RA Capacity Flat Price” means \$ [REDACTED]/kW-year.
- 1.43 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions in conjunction with the CAISO Tariff requirements, or by an LRA or other Governmental Body having jurisdiction.
- 1.44 “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations of such Unit, exclusive of any LAR Attributes.
- 1.45 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having jurisdiction.
- 1.46 “Replacement Capacity” has the meaning specified in Section 5.2 hereof.
- 1.47 “Replacement Unit” means a generating unit providing Replacement Capacity in

accordance with Section 5.2 hereof.

- 1.48 “Resource Category” means the category attributed to the resource as described in the CPUC’s *2013 Filing Guide for System and Local Resource Adequacy (RA) Compliance Filings*, as such may be modified, amended, supplemented or updated from time to time.
- 1.49 “RMR Agreement” has the meaning specified in the Tariff.
- 1.50 “Scheduling Coordinator” or “SC” has the meaning defined in the Tariff.
- 1.51 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.52 “Showing Month” shall be the calendar month that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.53 “Standard Capacity Product” has the meaning specified in the Tariff.
- 1.54 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.
- 1.55 “Tariff” means the CAISO operating agreement and tariff, including the rules, protocols, procedures, business practice manuals and standards attached thereto, as amended, supplemented or modified from time to time.
- 1.56 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.57 “Unit” or “Units” shall mean the generation assets described in Section 2 hereof (including any Replacement Unit(s)), from which Product is provided by Seller to Buyer.
- 1.58 “Unit Contract Quantity” means the quantity of RA Capacity (in MWs) to be delivered by Seller to Buyer from each individual Unit as of the Confirmation Effective Date, equivalent to each such Unit’s RA Capacity multiplied by the Prorated Percentage of Unit Factor, as specified in (and may be adjusted pursuant to) Section 4.3 hereof.

2. **Unit Information**¹

Name: Geysers Geothermal Unit 13

Location: Middletown, CA

CAISO Resource ID: GEYS13_7_UNIT13

Unit SCID: CALJ

¹ To be repeated for each Unit if more than one.

Unit CAISO Net Qualifying Capacity (as of Confirmation Effective Date):

56 MW

Prorated Percentage of Unit Factor: 5.4%

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“substation or transmission line”): Lakeville Substation (PG&E)

Path 26 (North or South): North

LCR Area (if any, as of Confirmation Effective Date): PG&E Other

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None

Run Hour Restrictions: Noe

3. Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer pursuant to the terms of this Confirmation: (a) RAR Attributes, LAR Attributes and Capacity Attributes, and (b) either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.2 or 3.3 below by checking the applicable provision ((a) and (b) shall be collectively referred to as the “Product”). Product does not confer to Buyer any right to dispatch or receive the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller is not required to make available any energy or ancillary services associated with any Unit to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any Product from a Unit in excess of that Unit’s Unit Contract Quantity and any RAR Attributes, LAR Attributes or Capacity Attributes not otherwise transferred, conveyed or sold to Buyer under this Confirmation to a third party.

3.1 [Reserved]

3.2 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Unit(s) in the amount of the Contract Quantity. If the Unit(s) is/are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to

Section 5.2 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, then Seller shall be liable for damages and/or to indemnify Buyer for penalties or fines pursuant to the terms of Section 5 if Seller is not able to replace the Designated RA Capacity.

3.3 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Unit(s) in the amount of the Contract Quantity. If the Unit(s) is/are not available to provide the full amount of the Contract Quantity because of a Non-Excusable Event, Seller shall provide Buyer with Replacement Capacity pursuant to Section 5.2 hereof. If the Unit(s) provide less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event, Seller may but is not obligated to provide Buyer with Replacement Capacity.

4. Delivery and Payment

4.1 Delivery Period

The Delivery Period shall be from January 1, 2014 through December 31, 2014.

4.2 [Reserved]

4.3 Unit Contract Quantity:

The Unit Contract Quantity of each Unit for each Monthly Delivery Period shall be as follows:

Unit Contract Quantity (MWs)

Month	2014
January	3
February	3
March	3
April	3
May	3
June	3
July	3
August	3
September	3

Month	2014
October	3
November	3
December	3

If any portion of the Unit Contract Quantity of any Unit providing a Contingent Firm RA Product is not available after the Confirmation Effective Date for reasons other than a Non-Excusable Event, then to the extent Seller does not provide Replacement Capacity the Unit Contract Quantity shall be adjusted to the product of the Unit's (a) RA Capacity following adjustment, and (b) Prorated Percentage of Unit Factor, provided that the resulting Unit Contract Quantity shall not exceed the original Unit Contract Quantity on the Confirmation Effective Date.

4.4 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, following each Monthly Delivery Period. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e. two decimal places). Each Monthly RA Capacity Payment may be subject to reduction in accordance with Section 4.5 hereof.

The respective monthly Price Shape Factor, set forth in the Monthly Capacity Price Shape Factor Table below, shall apply throughout the entire Delivery Period.

MONTHLY PAYMENT PRICE SHAPE FACTOR TABLE

Contract Month	Price Shape Factor (%)
Jan	7
Feb	5
Mar	4
Apr	4
May	4
Jun	7

Contract Month	Price Shape Factor (%)
Jul	13
Aug	15
Sep	13
Oct	10
Nov	10
Dec	8

4.5 Reduction of Monthly RA Capacity Payment (Contingent Firm RA Product only)

For any Contingent Firm RA Product, the Monthly RA Capacity Payment for each Unit shall be reduced by its RA Availability Adjustment, which is calculated for any Showing Month as follows:

- (a) When the Unit's RA Availability is greater than or equal to 80 percent, the Unit's RA Availability Adjustment shall be zero.
- (b) When the Unit's RA Availability is greater than or equal to 50 percent, but less than 80 percent, the Unit's RA Availability Adjustment shall be equal to:

$(0.80 - \text{RA Availability}) * 0.50 * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1000.$

- (c) When the Unit's RA Availability is less than 50 percent, the Unit's RA Availability Adjustment shall be equal to:

$[(0.80 - 0.50) * 0.50 + (0.50 - \text{RA Availability})] * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1,000$

The final product of this RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e. two decimal places). The RA Availability Adjustment for each Unit shall be subtracted from the Monthly RA Capacity Payment determined in Section 4.4 to determine the amount due to the Seller for Designated RA Capacity provided hereunder from each Unit. In no case shall a Unit's Monthly RA Capacity Payment be less than zero.

4.6 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity

revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services and (e) Standard Capacity Product sales. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Capacity Services Tariff, Transitional Capacity Procurement Mechanism (TCPM), Interim Capacity Procurement Mechanism (ICPM), and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (d) above). In accordance with Section 4.4 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in this Section, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Designated RA Capacity. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

Subject to the Units being made available to the CAISO in accordance with Section 6 of this Confirmation, Seller agrees that the Units are subject to the terms of the Availability Standards. Furthermore, 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.

5. Seller's Failure to Deliver Contract Quantity

5.1 Notices and Filings

Seller shall, on a timely basis, submit, or cause each Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity of each Unit sold to Buyer under this Confirmation. Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable RAR or LAR Showing, that Buyer will be credited with the Designated RA Capacity for the Delivery Period in the Unit's Scheduling Coordinator's Supply Plan.

5.2 RA Capacity from Replacement Units

In the event that any amount of the Contract Quantity provided hereunder to Buyer from a Unit is unavailable for any Monthly Delivery Period due to a Non-Excusable Event, Seller shall, at no cost to Buyer, provide Buyer with capacity having equivalent RAR Attributes, LAR Attributes and Capacity Attributes compared to the Designated RA

Capacity not provided by Seller (such replacement capacity being referred to as “Replacement Capacity”) from one or more Replacement Units, such that the total amount of Designated RA Capacity provided to Buyer from all Units and Replacement Units equals the Contract Quantity. The designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld. Seller shall identify Replacement Units meeting the above requirements no later than fifteen (15) Business Days before the relevant deadline for Buyer’s RAR Showing and/or LAR Showing. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.2, any such Replacement Unit shall be automatically deemed to be a Unit for purposes of this Confirmation for that Monthly Delivery Period.

5.3 Purchase of Replacement Capacity

If, as a result of a Non-Excusable Event, the Designated RA Capacity provided hereunder is less than the Contract Quantity, and if Seller fails to provide to Buyer any portion of Designated RA Capacity from Replacement Units for any Showing Month pursuant to Section 5.2 hereof, Buyer may, but shall not be required to, replace any Designated RA Capacity not provided by Seller with Replacement Capacity. Buyer may enter into purchase transactions with one or more other parties to replace Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the Product to another party, and such arrangements shall be considered to be the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.

5.4 Damages for Failure to Deliver

If, as a result of a Non-Excusable Event, the Designated RA Capacity provided hereunder is less than the Contract Quantity, and if Seller is required to provide to Buyer Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, and fails to do so pursuant to Section 5.2 hereof, then, if Buyer purchases Replacement Capacity, for purposes of determining the damages due to Buyer under Section 4.1 of the Master Agreement, Seller shall pay to Buyer, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” an amount equal to the product of (a) the positive difference, if any, between the Capacity Replacement Price less the Contract Price for that month *multiplied by* (b) the portion of Contract Quantity not provided by Seller. If Seller fails to pay those damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

5.5 Indemnities for Failure to Deliver Designated RA Capacity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units as required by Section 5.2 and Buyer is unable to purchase Replacement Capacity, then with respect to the portion of Contract Quantity that Buyer has not replaced, Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO, or an LRA having jurisdiction, resulting from any of: (a) the

Designated RA Capacity provided to Buyer hereunder being less than the Contract Quantity due to a Non-Excusable Event, and Seller's failure to replace the shortfall in Designated RA Capacity from Replacement Units in accordance with Section 5.2 hereof; or (b) Seller's failure to provide notice of the non-availability of any portion of the Designated RA Capacity as required under Section 5.1 hereof. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. Seller will have no obligation to Buyer under this Section 5.5 in respect of the portion of Contract Quantity for which Seller has paid damages pursuant to Section 5.4 hereof. If Seller fails to pay those penalties or fines, or fails to reimburse Buyer for those penalties and fines, then Buyer may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Confirmation.

6. CAISO Offer Requirements

During the Delivery Period, except to the extent any Unit is in an Outage, Seller shall, or shall cause each Unit's Scheduling Coordinator to, schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

7. Planned Outages

Upon the Confirmation Effective Date and no later than January 1, April 1, July 1 and October 1 of each calendar year until the end of the Delivery Period, Seller shall submit, or cause each Unit's Scheduling Coordinator to submit to Buyer the portion of each Unit's schedule of proposed Planned Outages for the Unit Contract Quantity for the following twenty- four (24) month period that overlaps the Delivery Period ("Outage Schedule"). Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Planned Outage for the Unit Contract Quantity. Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

Planned Outages shall not be scheduled from each May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

8. Other Buyer and Seller Covenants

- 8.1 Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR, as applicable. Buyer and Seller shall be deemed to have made commercially reasonable efforts if such actions require a Party to incur, in the aggregate, costs of up to \$10,000 per calendar year during the Delivery Period. Such commercially reasonable actions shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR or LAR, so as to maintain the benefits of the bargain agreed by the Parties on the Confirmation Effective Date.
- 8.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
- (a) Seller owns, or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or LAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or a Unit's owner or operator;
 - (c) [Reserved];
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

- (e) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's Scheduling Coordinator schedules energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO;
- (f) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (g) Seller shall, and each Unit's SC, owner or operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (h) If Seller is the owner of any Unit, the aggregation of all amounts of LAR Attributes and RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (i) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;
- (j) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Confirmation;
- (k) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each RAR or LAR Showing, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and
- (l) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

9. Confidentiality

9.1 Definition of Confidential Information

The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by Buyer and Seller, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or

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

9.2 Duty to Maintain Confidentiality

Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

9.3 Disclosure of Information

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, further disclosure of any such information to any such applicable Governmental Body, CAISO, LRA or SC.

10. **Buyer’s Re-Sale of Product**

Buyer may re-sell all or a portion of the Product hereunder.

11. **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 in connection with this Agreement.

12. **Declaration of an Early Termination Date and Calculation of Settlement Amounts**

Notwithstanding anything to the contrary in this Confirmation, the Parties shall determine the Settlement Amount for this Transaction in accordance Section 5.2 of the Master Agreement

using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties or fines from the CPUC, the CAISO, or any other LRA or Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable RAR Showing or LAR Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

BUYER

SELLER

MARIN ENERGY AUTHORITY

CALPINE ENERGY SERVICES, L.P.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CONFIRMATION FOR RESOURCE ADEQUACY CAPACITY PRODUCT FOR CAISO RESOURCES

This confirmation letter (“Confirmation”), confirms the mutual understanding and agreement (“Transaction”) between Calpine Energy Services, L.P. (“Seller”) and Marin Energy Authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of _____ in which Seller agrees to provide to Buyer the right to the Product (as defined herein). This Transaction and Confirmation are being provided pursuant to and in accordance with the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of _____ (collectively the “Master Agreement”), along with the Cover Sheet and any amendments and annexes, including the EEI Collateral Annex, thereto (together with the Master Agreement, collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms not otherwise defined in this Confirmation have the meanings specified in the EEI Agreement or Tariff (as defined herein). To the extent that this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions

- 1.01 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.02 “Availability Incentive Payments” has the meaning specified in the Tariff.
- 1.03 “Availability Standards” has the meaning specified in the Tariff.
- 1.04 “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.05 “CAISO” means the California Independent System Operator Corporation, or its successor entity.
- 1.06 “CAISO Control Area” has the meaning specified in the Tariff.
- 1.07 “CAISO Controlled Grid” has the meaning specified in the Tariff.
- 1.08 “Capacity Attributes” means any and all current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services and ramp up or ramp down at a given rate), certificates, tags, credits, howsoever entitled (including any accounting construct), in each case which are counted toward any resource adequacy requirements attributed to or associated with the Unit(s) throughout the Delivery Period and are consistent with the operational limitations of such Unit(s).
- 1.09 “Capacity Replacement Price” means (a) the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided

at the Delivery Point. For purposes of the definition of “Replacement Price” in Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price” for the Agreement.

- 1.10 “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.11 “Confirmation Effective Date” means the date that both this Confirmation and that certain Confirmation Letter between the Parties dated as of even date herewith have been fully executed by the Parties.
- 1.12 “Contingent Firm RA Product” has the meaning specified in Section 3.3 hereof.
- 1.13 “Contract Price” means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape Factor for such period.
- 1.14 “Contract Quantity” means the total Unit Contract Quantity of all Units.
- 1.15 “CPUC” means the California Public Utilities Commission.
- 1.16 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-06-031, 07-06-029, 08-06-031, 09-06-028 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, and/or subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18 “Designated RA Capacity” means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable LAR Showings, in each case as determined by the CAISO pursuant to the Tariff, or by an LRA having jurisdiction. Designated RA Capacity shall include those attributes associated with the capacity identified in Sections 2 and 3 hereof. For each Monthly Delivery Period, a Unit’s Designated RA Capacity shall be equal to the product of (x) the Unit’s RA Capacity, after reflecting adjustments for Outages, if any, required by the CAISO Tariff, or by an LRA having jurisdiction, and (y) the Unit’s Prorated Percentage of Unit Factor, provided that the total amount of Designated RA Capacity from all Units shall not exceed the Contract Quantity.
- 1.19 “Eligible Unit” means any of the geothermal power plants owned or controlled by Seller and located in Lake and Sonoma Counties, California.
- 1.20 “Firm RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.21 “GADS” means the Generating Availability Data System, or its successor.
- 1.22 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental

tribunal.

- 1.23 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff or by another LRA having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.24 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area that can be counted toward LAR and are consistent with the operational limitations of such Unit, but exclusive of any RAR Attributes. For clarity, it should be understood that the LAR Attributes associated with a Unit by virtue of its location or point of electrical interconnection may change as the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas and such change will not result in a change in payments made pursuant to this transaction.
- 1.25 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.26 “LRA” means Local Regulatory Authority, as defined in the Tariff.
- 1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.29 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30 “Monthly RA Capacity Payment” has the meaning specified in Section 4.4 hereof.
- 1.31 “NERC” means the North American Electric Reliability Council, or its successor.
- 1.32 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.33 “Non-Availability Charges” has the meaning specified in the Tariff.
- 1.34 “Non-Excusable Event” means Seller’s (a) failure to perform its obligations under this Confirmation due to Seller’s negligence, or the negligence of the owner, operator, or SC of a Unit, (b) failure to perform its obligations under this Confirmation, including, without limitation, the failure to cause the owner, operator or SC of a Unit to comply with

the operations and maintenance standards specified in Section 8.2.(f), or (c) failure to comply, or failure to cause the owner, operator or SC of the Units to comply, with the terms of the Tariff with respect to the Units providing RAR Attributes and LAR Attributes, as applicable; provided that in each case such failure results or will result in the CPUC not allowing Buyer to count the applicable amount of Unit Contract Quantity towards its RAR.

- 1.35 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of such Unit consistent with the Tariff.
- 1.36 “Planned Outage” has the meaning in the Tariff, and includes a planned, scheduled, or any other Outage for the routine repair or maintenance of a Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.37 “Price Shape Factor” means the Price Shape Factor specified in the Monthly Payment Price Shape Factor Table in Section 4.4 hereof.
- 1.38 “Product” has the meaning specified in Section 3 hereof.
- 1.39 “Prorated Percentage of Unit Factor” means the percentage of RA Capacity, as specified in Section 2 hereof, from a Unit that is dedicated to Buyer.
- 1.40 “RA Availability” means, for each Unit, expressed as a percentage, (a) the Designated RA Capacity for a Monthly Delivery Period divided by (b) the Unit Contract Quantity, as reduced according to Section 4.3 if applicable, provided that a Unit’s RA Availability shall not exceed 1.00.
- 1.41 “RA Availability Adjustment” has the meaning specified in Section 4.5 hereof.
- 1.42 “RA Capacity” means the qualifying and deliverable capacity of a Unit for RAR and LAR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws.
- 1.43 “RA Capacity Flat Price” means \$█/kW-year.
- 1.44 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions in conjunction with the CAISO Tariff requirements, or by an LRA or other Governmental Body having jurisdiction.
- 1.45 “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations of such Unit, exclusive of any LAR Attributes.
- 1.46 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having

jurisdiction.

- 1.47 “Replacement Capacity” has the meaning specified in Section 5.2 hereof.
- 1.48 “Replacement Unit” means a generating unit providing Replacement Capacity in accordance with Section 5.2 hereof.
- 1.49 “Resource Category” means the category attributed to the resource as described in the CPUC’s *2013 Filing Guide for System and Local Resource Adequacy (RA) Compliance Filings*, as such may be modified, amended, supplemented or updated from time to time.
- 1.50 “RMR Agreement” has the meaning specified in the Tariff.
- 1.51 “Scheduling Coordinator” or “SC” has the meaning defined in the Tariff.
- 1.52 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.53 “Showing Month” shall be the calendar month that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.54 “Standard Capacity Product” has the meaning specified in the Tariff.
- 1.55 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.
- 1.56 “Tariff” means the CAISO operating agreement and tariff, including the rules, protocols, procedures, business practice manuals and standards attached thereto, as amended, supplemented or modified from time to time.
- 1.57 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.58 “Unit” or “Units” shall mean the generation assets described in Section 2 hereof (including any Replacement Unit(s) or any other Eligible Unit designated in a written notice from Seller to Buyer), from which Product is provided by Seller to Buyer.
- 1.59 “Unit Contract Quantity” means the quantity of RA Capacity (in MWs) to be delivered by Seller to Buyer from each individual Unit as of the Confirmation Effective Date, equivalent to each such Unit’s RA Capacity multiplied by the Prorated Percentage of Unit Factor, as specified in (and may be adjusted pursuant to) Section 4.3 hereof.

2. Unit Information¹

Name: Geysers Geothermal Unit 13

¹ To be repeated for each Unit if more than one.

Location: Middletown, CA

CAISO Resource ID: GEYS13_7_UNIT13

Unit SCID: CALJ

Unit CAISO Net Qualifying Capacity (as of Confirmation Effective Date):

56 MW

Prorated Percentage of Unit Factor: 5.4%

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“substation or transmission line”): Lakeville Substation (PG&E)

Path 26 (North or South): North

LCR Area (if any, as of Confirmation Effective Date): PG&E Other

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None

Run Hour Restrictions: None

3. Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer pursuant to the terms of this Confirmation: (a) RAR Attributes, LAR Attributes and Capacity Attributes, and (b) either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.2 or 3.3 below by checking the applicable provision ((a) and (b) shall be collectively referred to as the “Product”). Product does not confer to Buyer any right to dispatch or receive the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller is not required to make available any energy or ancillary services associated with any Unit to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any Product from a Unit in excess of that Unit’s Unit Contract Quantity and any RAR Attributes, LAR Attributes or Capacity Attributes not otherwise transferred, conveyed or sold to Buyer under this Confirmation to a third party.

3.1 [Reserved]

3.2 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Unit(s) in the amount of the Contract Quantity. If the Unit(s) is/are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, then Seller shall be liable for damages and/or to indemnify Buyer for penalties or fines pursuant to the terms of Section 5 if Seller is not able to replace the Designated RA Capacity.

3.3 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Unit(s) in the amount of the Contract Quantity. If the Unit(s) is/are not available to provide the full amount of the Contract Quantity because of a Non-Excusable Event, Seller shall provide Buyer with Replacement Capacity pursuant to Section 5.2 hereof. If the Unit(s) provide less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event, Seller may but is not obligated to provide Buyer with Replacement Capacity.

4. Delivery and Payment

4.1 Delivery Period

The Delivery Period shall be from January 1, 2017 through December 31, 2026.

4.2 [Reserved]

4.3 Unit Contract Quantity:

The Unit Contract Quantity of each Unit for each Monthly Delivery Period shall be as follows:

Unit Contract Quantity (MWs)

Month	2017-2026
January	10
February	10
March	10
April	10
May	10
June	10

Month	2017-2026
July	10
August	10
September	10
October	10
November	10
December	10

If any portion of the Unit Contract Quantity of any Unit providing a Contingent Firm RA Product is not available after the Confirmation Effective Date for reasons other than a Non-Excusable Event, then to the extent Seller does not provide Replacement Capacity the Unit Contract Quantity shall be adjusted to the product of the Unit's (a) RA Capacity following adjustment, and (b) Prorated Percentage of Unit Factor, provided that the resulting Unit Contract Quantity shall not exceed the original Unit Contract Quantity on the Confirmation Effective Date.

4.4 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, following each Monthly Delivery Period. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e. two decimal places). Each Monthly RA Capacity Payment may be subject to reduction in accordance with Section 4.5 hereof.

The respective monthly Price Shape Factor, set forth in the Monthly Capacity Price Shape Factor Table below, shall apply throughout the entire Delivery Period.

MONTHLY PAYMENT PRICE SHAPE FACTOR TABLE

Contract Month	Price Shape Factor (%)
Jan	7
Feb	5
Mar	4

Contract Month	Price Shape Factor (%)
Apr	4
May	4
Jun	7
Jul	13
Aug	15
Sep	13
Oct	10
Nov	10
Dec	8

4.5 Reduction of Monthly RA Capacity Payment (Contingent Firm RA Product only)

For any Contingent Firm RA Product, the Monthly RA Capacity Payment for each Unit shall be reduced by its RA Availability Adjustment, which is calculated for any Showing Month as follows:

- (a) When the Unit's RA Availability is greater than or equal to 80 percent, the Unit's RA Availability Adjustment shall be zero.
- (b) When the Unit's RA Availability is greater than or equal to 50 percent, but less than 80 percent, the Unit's RA Availability Adjustment shall be equal to:

$(0.80 - \text{RA Availability}) * 0.50 * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1000.$

- (c) When the Unit's RA Availability is less than 50 percent, the Unit's RA Availability Adjustment shall be equal to:

$[(0.80 - 0.50) * 0.50 + (0.50 - \text{RA Availability})] * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1,000$

The final product of this RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e. two decimal places). The RA Availability Adjustment for each Unit shall be subtracted from the Monthly RA Capacity Payment determined in Section 4.4 to determine the amount due to the Seller for Designated RA Capacity provided hereunder

from each Unit. In no case shall a Unit's Monthly RA Capacity Payment be less than zero.

4.6 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services and (e) Standard Capacity Product sales. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Capacity Services Tariff, Transitional Capacity Procurement Mechanism (TCPM), Interim Capacity Procurement Mechanism (ICPM), and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (d) above). In accordance with Section 4.4 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in this Section, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Designated RA Capacity. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

Subject to the Units being made available to the CAISO in accordance with Section 6 of this Confirmation, Seller agrees that the Units are subject to the terms of the Availability Standards. Furthermore, 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.

5. **Seller's Failure to Deliver Contract Quantity**

5.1 Notices and Filings

Seller shall, on a timely basis, submit, or cause each Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity of each Unit sold to Buyer under this Confirmation. Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable RAR or LAR Showing, that Buyer will be credited with the Designated RA Capacity for the Delivery Period in the Unit's Scheduling Coordinator's Supply Plan.

5.2 RA Capacity from Replacement Units

In the event that any amount of the Contract Quantity provided hereunder to Buyer from a Unit is unavailable for any Monthly Delivery Period due to a Non-Excusable Event, Seller shall, at no cost to Buyer, provide Buyer with capacity having equivalent RAR Attributes, LAR Attributes and Capacity Attributes compared to the Designated RA Capacity not provided by Seller (such replacement capacity being referred to as “Replacement Capacity”) from one or more Replacement Units, such that the total amount of Designated RA Capacity provided to Buyer from all Units and Replacement Units equals the Contract Quantity. The designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld. Seller shall identify Replacement Units meeting the above requirements no later than fifteen (15) Business Days before the relevant deadline for Buyer’s RAR Showing and/or LAR Showing. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.2, any such Replacement Unit shall be automatically deemed to be a Unit for purposes of this Confirmation for that Monthly Delivery Period.

5.3 Purchase of Replacement Capacity

If, as a result of a Non-Excusable Event, the Designated RA Capacity provided hereunder is less than the Contract Quantity, and if Seller fails to provide to Buyer any portion of Designated RA Capacity from Replacement Units for any Showing Month pursuant to Section 5.2 hereof, Buyer may, but shall not be required to, replace any Designated RA Capacity not provided by Seller with Replacement Capacity. Buyer may enter into purchase transactions with one or more other parties to replace Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the Product to another party, and such arrangements shall be considered to be the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.

5.4 Damages for Failure to Deliver

If, as a result of a Non-Excusable Event, the Designated RA Capacity provided hereunder is less than the Contract Quantity, and if Seller is required to provide to Buyer Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, and fails to do so pursuant to Section 5.2 hereof, then, if Buyer purchases Replacement Capacity, for purposes of determining the damages due to Buyer under Section 4.1 of the Master Agreement, Seller shall pay to Buyer, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” an amount equal to the product of (a) the positive difference, if any, between the Capacity Replacement Price less the Contract Price for that month *multiplied by* (b) the portion of Contract Quantity not provided by Seller. If Seller fails to pay those damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

5.5 Indemnities for Failure to Deliver Designated RA Capacity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units as required by Section 5.2 and Buyer is unable to purchase Replacement Capacity, then with respect to the portion of Contract Quantity that Buyer has not replaced, Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO, or an LRA having jurisdiction, resulting from any of: (a) the Designated RA Capacity provided to Buyer hereunder being less than the Contract Quantity due to a Non-Excusable Event, and Seller's failure to replace the shortfall in Designated RA Capacity from Replacement Units in accordance with Section 5.2 hereof; or (b) Seller's failure to provide notice of the non-availability of any portion of the Designated RA Capacity as required under Section 5.1 hereof. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. Seller will have no obligation to Buyer under this Section 5.5 in respect of the portion of Contract Quantity for which Seller has paid damages pursuant to Section 5.4 hereof. If Seller fails to pay those penalties or fines, or fails to reimburse Buyer for those penalties and fines, then Buyer may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Confirmation.

6. CAISO Offer Requirements

During the Delivery Period, except to the extent any Unit is in an Outage, Seller shall, or shall cause each Unit's Scheduling Coordinator to, schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

7. Planned Outages

Upon the Confirmation Effective Date, and to the extent that Seller intends to take one more Planned Outages for the Unit during the next twelve (12) month period and will not be providing Replacement Capacity or designating a different Eligible Unit as the Unit hereunder, no later than January 1, April 1, July 1 and October 1 of each calendar year until the end of the Delivery Period, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Unit Contract Quantity for the following twelve (12) month period that overlaps the Delivery Period ("Outage Schedule"). Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Planned Outage for the Unit Contract Quantity. Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

Planned Outages shall not be scheduled from each May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

8. Other Buyer and Seller Covenants

- 8.1 Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR, as applicable. Buyer and Seller shall be deemed to have made commercially reasonable efforts if such actions require a Party to incur, in the aggregate, costs of up to \$10,000 per calendar year during the Delivery Period. Such commercially reasonable actions shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR or LAR, so as to maintain the benefits of the bargain agreed by the Parties on the Confirmation Effective Date.
- 8.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
- (a) Seller owns, or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or LAR or analogous obligations in CAISO markets,

other than pursuant to an RMR Agreement between the CAISO and either Seller or a Unit's owner or operator;

- (c) [Reserved];
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (e) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's Scheduling Coordinator schedules energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO;
- (f) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (g) Seller shall, and each Unit's SC, owner or operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (h) If Seller is the owner of any Unit, the aggregation of all amounts of LAR Attributes and RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (i) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;
- (j) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Confirmation;
- (k) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each RAR or LAR Showing, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and
- (l) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

9. Confidentiality

9.1 Definition of Confidential Information

The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by Buyer and Seller, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

9.2 Duty to Maintain Confidentiality

Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

9.3 Disclosure of Information

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, further disclosure of any such information to any such applicable Governmental Body, CAISO, LRA or SC.

10. Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product hereunder.

11. 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 in connection with this Agreement.

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

Notwithstanding anything to the contrary in this Confirmation, the Parties shall determine the Settlement Amount for this Transaction in accordance Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties or fines from the CPUC, the CAISO, or any other LRA or Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable RAR Showing or LAR Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

BUYER

SELLER

MARIN ENERGY AUTHORITY

CALPINE ENERGY SERVICES, L.P.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



July 11, 2013

TO: Marin Energy Authority Board

FROM: Jamie Tuckey, Communications Director

RE: Communications Update (Agenda Item #7)

ATTACHMENT:

- A. Green-e Energy Required Deep Green Mailing
- B. Marin Independent Journal Print Advertisement
- C. Pacific Sun Print Advertisement
- D. Patch Energy Efficiency Announcement
- E. Press Release: MCE to Showcase New Online Tool at Marin County Fair
- F. 'My Energy Kit' Brochure
- G. Residential Joint Cost Comparison Mailer
- H. Commercial Joint Cost Comparison Mailer
- I. Revised PG&E Energy Statement

Dear Board Members:

SUMMARY:

Green-e Energy Marketing Compliance

The Center for Resource Solutions (CRS) is a national non-profit that administers Green-e Energy, the nation's leading independent certification and verification program for renewable energy in the retail market. The Green-e Energy product certification provides customers of voluntary green pricing programs with third-party assurance that they are supporting new renewable energy projects that meet high quality accounting standards. On March 2, 2012 MCE's Deep Green 100% renewable energy product was certified by Green-e Energy.

To maintain the integrity of the Green-e brand, CRS requires that participants meet Green-e Energy standards for environmental quality and consumer disclosure outlined in the Green-e Energy National Standard as well as the Green-e Energy Code of Conduct and Customer Disclosure Requirements. Participants must provide their customers factual, and in some cases standardized, information about their power products so that customers have sufficient information to make informed purchasing decisions.

To meet the Green-e requirements, organizations offering a Green-e Energy Certified product must provide customers of the Green-e Energy Certified product with two

Product Content Labels annually: 1. a prospective Product Content Label (projected renewable energy content for the current year), and 2. a historic Product Content Label (actual renewable energy content for the previous year). These two labels can be contained in the same document. Additionally, participant organizations must provide all residential customers with standardized price, terms, and conditions that clearly describe the customer's responsibilities in purchasing the Green-e Energy Certified renewable energy option.

To meet these customer communications requirements, MCE mailed an informational packet (Attachment A) to all Deep Green customers on June 28, 2013.

The Deep Green packet included the following documents:

- Thank you letter
- Historic and prospective Product Content letter
- Green-e standardized price, terms & conditions
- Energy efficiency insert
- Deep Green sticker and window cling

MCE Energy Efficiency Program Marketing

MCE is offering an extensive energy efficiency program in Marin County and the City of Richmond. To drive participation, awareness and support, MCE is sponsoring the 'Make Your World Pavilion' at the 2013 Marin County Fair. In addition to numerous Do-It-Yourself activities focused on sustainability and innovation, the Pavilion will also showcase MCE's My Energy Tool, a web-based energy assessment tool that helps homeowners save money, reduce greenhouse gas emissions and make their homes more comfortable.

Fairgoers can demo the web-tool to help determine what energy improvements can be made in their home and what the cost savings of implementing these measures could be. Staff will be present at the fair to offer assistance and answer questions. Those who sign in to the website at the fair and make a pledge to reduce their energy use will also receive a free kit with energy saving items (including a high performance shower head, LED night light and energy-saving light bulbs).

MCE has also initiated extensive marketing and communications efforts including paid, earned, and social media strategies for MCE's energy efficiency program.

- Paid Media
 - Marin Independent Journal print advertisements (Attachment B)
 - ¼ page daily print (June 27-30 and July 3-6)
 - Marin Independent Journal digital advertisement
 - Leaderboard and rectangular ad (June 27 – July 6)
 - Pacific Sun print advertisements (Attachment C)
 - ¼ page weekly print (week of June 21 and June 28)
- Earned Media
 - Marin Voice, Marin Independent Journal
 - Patch Energy Efficiency Announcement (Attachment D)
- Social Media
 - Facebook
 - Twitter

- Blogs
- E-newsletters

Joint Cost Comparison Mailer

On December 20, 2012, the California Public Utilities Commission (CPUC) issued Decision 12-12-036 adopting a code of conduct and enforcement mechanisms related to utility interactions with community choice aggregators (CCAs), pursuant to Senate Bill 790.

The decision requires utilities and CCAs to prepare and distribute jointly to the customers within the CCA boundaries a neutral, complete, and accurate written comparison of their average rates, sample bill costs for a mutually agreed amount of usage, and generation portfolio contents. This comparison shall be distributed to all customers within the CCA boundaries, regardless of their account status as a CCA or PG&E bundled (full-service) customer. In addition, the CCA and electrical utility shall prepare a neutral, complete, and accurate comparison of all their rates, sample bill costs under those rates, and generation portfolio contents, and post these comparisons on their websites. The websites must be updated within 60 days after any rate changes by the CCA or utility.

MCE & PG&E identified the five most common rate schedules, listed below, and collaborated to create joint cost comparisons for each.

- Res-1/E-1 (Attachment G)
- Com-1/A-1 (Attachment H)
- Com-6/A-6
- Com-10/A-10S
- Com-19S/E-19S

Each of the mailers includes MCE & PG&E rates, average monthly costs, power sources, and CO2 emissions factors. The appropriate cost comparison(s) were mailed to all Marin and Richmond electric customers and posted on the MCE & PG&E websites the week of July 1, 2013. As mandated by the CPUC, MCE and PG&E equally shared the costs of the design, preparation, and distribution of the notice to customers.

The next joint comparison will be distributed no later than July 1, 2014.

Revised PG&E Energy Statement

In August 2013, according to PG&E's current schedule, all PG&E and MCE customers will receive PG&E's revised energy statement (Attachment I). The presentment changes should have a positive impact on customer understanding and include the following changes.

- The bill size will increase to 8.5x11 inches
- The payment stub will be moved from the top to the bottom
- The account number and due date will be listed on every page
- The font size will increase
- The bill will include graphs and charts to depict historic and current usage
- There will be a page break between each service type (gas, electric, third-party service)
- Electric charges will be displayed as PG&E electric delivery charges and MCE electric generation charges which will more clearly differentiate between MCE and PG&E charges and services

- MCE customers will be directed to PG&E's CCA dedicated customer service line instead of its general line for questions about the bill
- PG&E Electric Delivery page will include a 'Generation Credit' which will subtract what PG&E would have charged for electric generation for CCA customers

Staff will be further discussing the changes to PG&E's energy statement at the August Technical Committee meeting.

Recommendation: Information item only. No action needed.



Thank you for choosing MCE's Deep Green 100% Renewable Energy service option!

June 28, 2013

Dear Deep Green Customer,

As a valued Deep Green customer, we want to share a few important updates with you about MCE and our Deep Green program. Enclosed you will find MCE's 2012 and projected 2013 power content label as well as our most up-to-date prices, terms and conditions for Deep Green service.

We know the environment is a top priority for you, because you've already made a commitment to renewable energy. We also understand the importance of keeping utility bills low, so we've included information about our new energy efficiency program in this packet as well.

We invite you to visit us at the Marin County Fair July 3-7 for a demonstration of our new online energy efficiency tool.

Did you know that our non-polluting Deep Green power supply is independently verified by Green-e Energy, the nation's leading certification and verification program for renewable energy? Green-e provides independent, third-party certification to ensure certified renewable energy meets strict environmental and consumer protection standards. You can learn about Green-e at www.green-e.org.

Questions or comments? We'd love to hear from you and we look forward to serving you.

CALL US

1-888-632-3674
Monday - Friday
7 A.M. - 7 P.M.

EMAIL US

info@mceCleanEnergy.com

VISIT OUR WEBSITE

mceCleanEnergy.com

WRITE US

MCE
781 Lincoln Avenue, Suite 300
San Rafael, CA 94901



twitter.com/mceCleanEnergy



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Energy
CERTIFIED



Printed on Recycled Paper

Deep Green 100% Renewable Energy

Thanks to you, we're bringing renewable energy closer to home!

In 2012, MCE partnered with local businesses to build the largest solar project in Marin County at the San Rafael Airport. And we're already planning our next installation!

That's because MCE created a **local renewable development fund** which includes half of the revenue generated each year from our Deep Green program. By choosing Deep Green, not only are you reducing your global footprint and environmental impact, you're also contributing to the development of new clean energy projects right here in Marin and Richmond.

DEEP GREEN PRODUCT CONTENT LABEL¹

This product matches 100% of your estimated electricity usage.
The product will be made up of the following new renewable resources averaged annually.

Green-e Energy Certified New² Renewables in MCE's Deep Green 100% Renewable Service Option

ENERGY SOURCE	2012 CALENDAR YEAR (ACTUAL)	2013 CALENDAR YEAR (PROJECTED)	GENERATION LOCATION
· Biomass & waste	0%	0%	· Twin Falls County, ID · Cassia County, ID · Klickitat County, WA ³
· Geothermal	0%	0%	
· Small or Low Impact Hydroelectric	0%	0%	
· Solar	0%	0%	
· Wind	100%	100%	
Total Green-e Energy Certified New Renewables	100%	100%	
· Other Renewables	0%	0%	
· Large Hydroelectric	0%	0%	
· Coal	0%	0%	
· Natural Gas	0%	0%	
· Oil	0%	0%	
Total	100%	100%	

- 1 These figures reflect the power that we have contracted to provide. Actual figures may vary according to resource availability. We will annually report to you the actual resource mix of the electricity you purchased during the preceding year.
- 2 New Renewables come from generation facilities that first began commercial operation on or after 1/1/98.
- 3 Because all utilities in California are required to provide 20% renewable energy to all customers in 2013, this percentage of mandated renewables is included in Deep Green, and another 80% renewable energy is provided beyond this to comprise 100% renewable energy provided through Deep Green.

For comparison, the current average mix of resources supplying California customers includes: Coal (33.7%), Nuclear (4.6%), Oil (0 %), Natural Gas (41.9%), Hydroelectric (18.2%), and Other (1.6%).

For specific information about this electricity product, please contact MCE at 1 (888) 632-3674 or visit www.mceCleanEnergy.com.



Green-e Energy certifies that MCE's voluntary Deep Green 100% Renewable Energy product meets the minimum environmental and consumer protection standards established by the non-profit Center for Resource Solutions. For more information on Green-e Energy certification requirements, call 1-888-63-GREEN or log on to www.green-e.org.



Construction at the San Rafael Airport solar project, which began in July 2012 and was completed in October 2012, created demand for 20 new local jobs.



MCE DEEP GREEN PRICE, TERMS & CONDITIONS

MCE's voluntary Deep Green 100% renewable energy product is certified by Green-e Energy, which requires companies to provide their customers with this notice of Price, Terms and Conditions of service. You may cancel your participation in MCE's voluntary Deep Green 100% Renewable Energy service option by phone at 1 (888) 632-3674 or online at www.mceCleanEnergy.com. For more information about Green-e Energy, write Green-e Energy, PO Box 29512, San Francisco, CA 94129 or log onto www.green-e.org, or call toll-free 1-888-63-GREEN.

WHOM SHOULD I CONTACT FOR MORE INFORMATION?

PHONE:	1 (888) 632-3674	MAIL:	MCE
EMAIL:	customerservice@mceCleanEnergy.com		781 Lincoln Avenue, St. 320
WEB:	www.mceCleanEnergy.com		San Rafael, CA 94901

HOW WILL I BE BILLED?

PG&E will continue to send your monthly electric bill. MCE's charges for Deep Green 100% renewable electricity will be included on the bill with separate accounting.

HOW WILL MY BILL BE CALCULATED?

Deep Green customers pay \$0.01/kWh in addition to MCE Light Green rates. Please visit www.mceCleanEnergy.com/rates or call 1 (888) 632-3674 for additional information regarding your electric rates. You must also pay all applicable federal, state, and local taxes and charges.

HOW MUCH WILL MY TOTAL ELECTRICITY SERVICE COST, INCLUDING UTILITY CHARGES?

The following calculations provide estimates of monthly electricity charges (as of June 2013) for MCE Deep Green customers. You will continue to receive delivery service and charges from PG&E. Your actual bill will vary based on your use of electricity.

Residential (RES-1/E-1) customers, based on average monthly usage of 500 kWh:

MCE Electric Generation	\$37.00
MCE Deep Green Premium	\$5.00
PG&E Electric Delivery	\$38.72 (estimate)
PG&E PCIA (Exit Fee)	\$3.04 (estimate)
PG&E Franchise Fee	\$0.29 (estimate)
TOTAL:	\$84.04

Commercial (COM-1/A-1) customers, based on average monthly usage of 1,225 kWh:

<u>Summer Month</u>		<u>Winter Month</u>	
MCE Electric Generation	\$109.03	MCE Electric Generation	\$72.28
MCE Deep Green Premium	\$12.25	MCE Deep Green Premium	\$12.25
PG&E Electric Delivery	\$137.94 (estimate)	PG&E Electric Delivery	\$103 (estimate)
PG&E PCIA (Exit Fee)	\$5.95 (estimate)	PG&E PCIA (Exit Fee)	\$5.95 (estimate)
PG&E Franchise Fee	\$0.75 (estimate)	PG&E Franchise Fee	\$0.75 (estimate)
TOTAL:	\$265.91	TOTAL:	\$194.22

WILL MY RATES CHANGE OVER TIME?

MCE is committed to providing stable and affordable electric rates for its customers while delivering an environmentally responsible energy supply. Based on currently effective policies and schedules, MCE sets electric rates once per year. While MCE's rates may change over time, any changes will be proposed and adopted at public meetings typically with opportunity for public input. For more information regarding MCE's rates and rate setting process, please visit: www.mceCleanEnergy.com/rates

WHAT SOURCES WILL BE USED IN MY CERTIFIED PRODUCT?

Please see MCE's Power Content Label for the voluntary Deep Green 100% renewable energy service option on the reverse side or visit www.mceCleanEnergy.com/PDF/Power_Content_Labels.pdf.

IF I WANT TO TERMINATE THIS AGREEMENT/ CONTRACT, WHAT IS THE EARLY TERMINATION FEE?

There is no early termination fee should you choose to return to MCE's Light Green 50% Renewable Energy service option.

WHAT LENGTH OF AGREEMENT/ CONTRACT IS REQUIRED?

There is no term length associated with your participation in MCE's voluntary Deep Green 100% Renewable Energy service option. Failure to pay MCE charges may result in your return to PG&E bundled service.

WHAT OTHER FEES MIGHT I BE CHARGED?

If you opt out of MCE 60 days or later after the start of service you will be subject to the payment of a one-time \$5 (residential) or \$25 (commercial) termination fee.

MCE PRESENTS:

My Energy Efficiency



MCE's **Multi-Family** and **Small Commercial** energy efficiency programs help customers save energy and money by providing:

- free energy assessments
- free technical assistance
- rebates for whole building measures
- direct installations

To learn more please visit:
www.mceCleanEnergy.com/ee





MCE PRESENTS:

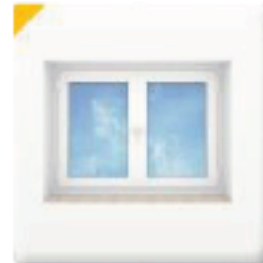
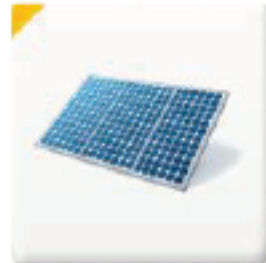
My Energy Tool

MCE's **My Energy Tool** makes it easy to save money, reduce your carbon footprint and increase the health and comfort of your home through energy and water efficiency.

Use My Energy Tool to create a customized plan for your home:

- Learn how to save money through behavior change, appliance upgrades and home enhancements
- Find contractors, equipment, rebates, and financing to take action
- Create an account and track your progress

Visit MyEnergyTool.mceCleanEnergy.com to get started!



MCE PRESENTS:

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- free technical assistance
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- direct installations

To learn more please visit:

www.mceCleanEnergy.com/ee



Finance Your Energy Efficiency Improvements Today



On-Bill Repayment Financing for Multi-family and Small Commercial Accounts

The smartest energy available today is the energy we don't use. That's why MCE is offering incentives to small commercial and multi-family accounts, for participation in our Energy Efficiency Program. Follow our simple guidelines to include our low-interest financing on your monthly utility bill.

Our On-Bill Repayment Plan will help you finance your energy efficiency upgrades, providing a win/win for everyone. Here's how it works:

- 5% fixed interest rate today*, 5–10 year terms
- \$250 non-refundable loan fee applies
- Loan payment placed on utility bill
- Scope of Work must be recommended through MCE Energy Efficiency Program
- Must be MCE customer
- Must qualify and credit is subject to Lender's approval; normal credit standards apply

**Interest rates are subject to change*

Applications are available beginning July 12, 2013 and are available for a limited time—contact MCE now to schedule your energy evaluation.



River City Bank

The **smartest** energy is energy you **don't** use.

Wish your utility bills were lower?
We can help.



Visit MCE's booth at the
Marin County Fair to try our
online **Energy Efficiency Tool**.

July 3-7, Make Your World Pavilion
Marin Civic Center Fairgrounds

MyEnergyTool.mceCleanEnergy.com

 **MCE** Clean Energy
My community. My choice.



The **smartest** energy is energy you **don't** use.

Wish your utility bills were lower?
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Visit MCE's booth at the
Marin County Fair to try our
online **Energy Efficiency Tool.**

July 3-7, Marin Civic
Center Fairgrounds



MyEnergyTool.mceCleanEnergy.com

Marin Patch Announcement



Board | [Announcements](#)

Wish Your Utility Bills Were Lower? Visit MCE's Booth at the Marin County Fair to try our online Energy Efficiency Tool!

Posted by [Jamie Tuckey](#), June 24, 2013 at 01:08 pm

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Among the many offerings available at the Marin County Fair this summer is the new Make Your World Pavilion hosted by Strategic Energy Innovations (SEI) and sponsored by MCE. In addition to numerous Do-It-Yourself activities focused on sustainability and innovation, the Pavilion will also showcase MCE's MyEnergyTool, a web-based energy assessment tool that helps homeowners save money, and reduce greenhouse gas emissions.

Fairgoers can demo the webtool, have their questions answered by experts and develop a personalized action plan on the spot. Those who sign in to the website at the fair will also receive a free kit with energy saving items (including a high performance shower head, LED night light and CFLs).


www.MyEnergyTool.mceCleanEnergy.com

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*Make an announcement,
speak your mind, or sell
something*

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**Tweens/Early Teens,
Join The Etiquette
Summer Camp Fun!**
Get Your Etiquette On!
Register your Tweens
and Early Teens now
with The Protocol
Academy, for...


[Get Your Etiquette On!](#)

Announcements June 28,
2013 at 02:08 pm
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FOR IMMEDIATE RELEASE: June 27, 2013

Jamie Tuckey | Communications Director
415.464.6024 | jtuckey@mceCleanEnergy.com

MCE TO SHOWCASE NEW ONLINE ENERGY EFFICIENCY WEB-TOOL AT MARIN FAIR ***MCE's 'My Energy Tool' builds customized plan to save homeowners money***

SAN RAFAEL, CA — Among the many offerings available at the Marin County Fair this summer is the new **Make Your World Pavilion** sponsored by MCE and hosted by Strategic Energy Innovations (SEI). In addition to numerous Do-It-Yourself activities focused on sustainability and innovation (e.g., building and racing solar cars and making paper with a blender bike) the Pavilion will also showcase **MCE's My Energy Tool**, a web-based energy assessment tool that helps homeowners save money, reduce greenhouse gas emissions and make their homes more comfortable.

Marin and Richmond fairgoers can demo the web-tool to help determine what energy improvements can be made on their home and what the cost savings of implementing these measures could be. The tool helps you evaluate your options and maximize your investment by developing an energy action plan customized to your needs with links to qualified contractors, incentives and rebates. Experts will be on-hand at the fair to offer assistance and answer any questions. Those who sign in to the website at the fair and make a pledge to reduce their energy use will also receive a free kit with energy saving items (including a high performance shower head, LED night light and energy-saving light bulbs).

For those who can't wait, the web tool is available at MyEnergyTool.mceCleanEnergy.com and can help you start saving energy (and money) today!

MCE's web-tool is just one part of its extensive energy efficiency program launched late last year designed to help single-family, multi-family, and small commercial buildings reduce energy and water consumption. MCE is offering no-cost walk-through energy assessments for qualifying multi-family properties to determine specific energy improvements and their potential energy and cost savings, as well as direct install measures such as exchanging incandescent bulbs with high efficiency lighting at no cost to the tenant or owner. MCE also offers rebates and technical assistance for implementing energy efficiency measures in commercial buildings and will soon be offering an on-bill repayment program to help finance the cost of energy upgrades and installations.

For more information about MCE's energy efficiency program offerings, visit www.mceCleanEnergy.com/ee.

###

About MCE: MCE is a public, not-for-profit electricity provider that gives customers the choice of having 50% to 100% of their electricity supplied from clean, renewable sources such as solar, wind, bioenergy, and hydroelectric at competitive rates. By choosing MCE, customers help support new in-state and local renewable energy generation. For more information about MCE, visit www.mceCleanEnergy.com or call 1 (888) 632-3674.

MCE's energy efficiency program is funded by California utility ratepayers under the auspices of the California Public Utilities Commission. California consumers are not obligated to purchase any full-fee service or other service not funded by this program. Funding is limited. Services and incentives are provided on a first-come, first-served basis and only while funding lasts.

About PlanetEcosystems: PlanetEcosystems is a consumer engagement and demand reduction service provider, helping utilities and local governments achieve substantial reductions in residential and commercial energy and water demand. To learn more, visit www.planetecosystems.com.

CFL Disposal

The small amount of mercury contained in CFLs allows them to be a more efficient light source. While no mercury is released when CFLs are in use, it is important to dispose of CFLs properly in order to keep mercury out of our air and water. Rather than just throwing old CFLs into the trash, please drop them off at:

Marin Household Hazardous Waste Facility

565 Jacoby Street, San Rafael/1-415-485-6806

Or visit: **www.zerowastemarin.org** to find other local CFL recycling options

CFL Clean-Up

Accidents happen. We've all attempted to change a light bulb only to have it slip through our fingers and end up in pieces on the floor. If a CFL should break, please take the following precautions to reduce mercury exposure:

- 1 Air out the room.** Have people and pets leave the room, and don't let anyone walk through the breakage area on their way out. Open a window and leave the room for 15 minutes. Shut off the central forced-air heating/air conditioning system, if you have one.
- 2 Carefully scoop up glass fragments and powder** using stiff paper or cardboard and place them in a glass jar with metal lid (such as a canning jar) or in a sealed plastic bag. Use sticky tape, such as duct tape, to pick up any remaining small glass fragments and powder. Wipe the area clean with damp paper towels or disposable wet wipes and place them in the glass jar or plastic bag. Do not use a vacuum or broom to clean up the broken bulb.
- 3 If clothing or bedding materials come in direct contact** with broken glass or mercury-containing powder from inside the bulb that may stick to the fabric, the clothing or bedding should be discarded. Do not wash such clothing or bedding.
- 4 Drop off the glass jar or plastic bag** containing the broken bulb and clean-up materials at a local recycling center.



Questions or Comments?

We'd love to hear from you!

VISIT OUR WEBSITE

mceCleanEnergy.com

EMAIL US

ee@mceCleanEnergy.com

CALL US

1-415-464-6010

twitter 

twitter.com/mceCleanEnergy

facebook

facebook.com/mceCleanEnergy



My Energy Kit

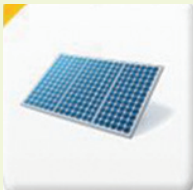
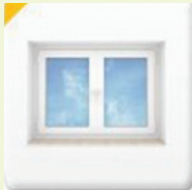


Making a Difference

Thank you for making the pledge to install the energy saving items in this kit! Installing these items is a great first step towards making your home more energy efficient.

To learn more about saving money by saving energy, please visit the following website to develop your personalized energy action plan:

myenergytool.mccleanenergy.com



Why Energy Efficiency?

Energy Efficiency means using less energy to deliver an equal (or greater) service. Not only does using less energy save money and natural resources, but it also reduces pollution from power plants.

In addition, some energy upgrades such as sealing leaks and adding insulation can also improve the comfort of a home.

Your Energy Kit

The following are examples of energy saving items that may be included in your energy efficiency kit:

Compact Fluorescent Lightbulbs



- Use 75% less energy than incandescent bulbs
- Last up to 6x longer

High Performance Showerheads



- Maintain water pressure
- Use roughly 30% less water
- Save energy

High Performance Faucet Aerators



- Maintain water pressure
- Use roughly 25-50% less water
- Save energy

More Ways to Save

- Turn off lights when you leave a room
- Unplug electronics when you are not using them
- Wash only full loads of dishes and laundry
- Air dry clothes instead of putting them in the dryer
- Make sure that all windows and doors are closed tightly when heating or cooling your home
- Be sure any new appliances or electronics have the "Energy Star" label
- Turn off the water while you brush your teeth
- Turn down your thermostat in the winter





Pacific Gas and Electric Company
P.O. Box 770000
Mail Code N3Z
San Francisco, CA 97177-1490

INDICIA
FPO

We support your power to choose

As part of our mutual commitment to support your energy choice, MCE and Pacific Gas and Electric Company (PG&E) have partnered to provide you with a comparison of typical electric rates, average monthly charges and generation portfolio contents. This comparison is based on a rate that is representative of our residential customers.

If this comparison does not address your specific rate, please visit us online at mceCleanEnergy.com or pge.com/cca.

Understanding your energy choice

2013 Residential Electric Rate Comparison, E-1 and RES-1

	PG&E	MCE Light Green 50% Renewable Energy	MCE Deep Green 100% Renewable Energy
Generation Rate (\$/kWh)	\$0.07884	\$0.07400	\$0.08400
PG&E Delivery Rate (\$/kWh)	\$0.12251	\$0.12251	\$0.12251
PG&E PCIA/FF (\$/kWh)	N/A	\$0.00664	\$0.00664
Total Electricity Cost (\$/kWh)	\$0.20135	\$0.20315	\$0.21315
Average Monthly Bill (\$)	\$102.26	\$103.17	\$108.25

Monthly usage: 508 kWh
Rates are current as of June 15, 2013

This compares electricity costs for a typical residential customer in the MCE/PG&E service area (Marin County and Richmond) with an average monthly usage of 508 kilowatt-hours (kWh). This is based on the recent 12-month billing history for all customers on E-1/RES-1 rate schedules for PG&E's and MCE's published rates as of June 15, 2013.

Generation Rate is the cost of creating electricity to power your home. The generation rate varies based on your energy provider. PG&E generation rates do not include temporarily deferred costs associated with greenhouse gas (GHG) compliance under the California Cap-and-Trade Program. These costs will be added to PG&E generation rates in 2014. MCE Generation Rates currently include these costs and MCE customers will not pay deferred costs in 2014.

PG&E Delivery Rate is a charge assessed by PG&E to deliver electricity to your home. The PG&E delivery rate depends on your electricity usage, but is charged equally to both MCE and PG&E customers. This rate does not reflect reductions associated with the sale of GHG allowances under California's Cap-and-Trade Program, which will be included in 2014.

PG&E PCIA/FF represents the Power Charge Indifference Adjustment (PCIA) and the Franchise Fee Surcharge (FF). The PCIA is a charge to cover PG&E's generation costs acquired prior to a customer's switch to a third-party electric generation provider. PG&E acts as a collection agent for the Franchise Fee Surcharge, which is levied by cities and counties for all customers.

2012 Electric Power Generation Mix*

Specific Purchases	Percent of Total Retail Sales (kWh)		
	PG&E	MCE Light Green	MCE Deep Green
Renewable	19%	53%	100%
• Biomass & Biowaste	4%	12%	0%
• Geothermal	5%	0%	0%
• Eligible hydroelectric	4%	2%	0%
• Solar electric	0%	1%	0%
• Wind	6%	38%	100%
Coal	0%	0%	0%
Large hydroelectric	18%	7%	0%
Natural Gas	25%	0%	0%
Nuclear	22%	0%	0%
Other	1%	0%	0%
Unspecified Power (kWh)	15%	40%	0%
TOTAL	100%	100%	100%

*2012 Data is from the "Annual Report to the California Energy Commission: Power Source Disclosure Program." The 2012 data is subject to an independent audit and verification that will not be completed until October 1, 2013.

2011 Total CO₂ Emissions from Electricity Sales per Megawatt-Hour**

PG&E	MCE Light Green	MCE Deep Green
393 pounds	389 pounds	0 pounds

**The CO₂ emission rates reflect the energy generation purchased by an energy provider. For the purposes of this chart, renewable energy, hydroelectric and nuclear resources have been considered GHG-free.





Pacific Gas and Electric Company
P.O. Box 770000
Mail Code N3Z
San Francisco, CA 97177-1490

INDICIA
FPO

We support your power to choose

As part of our mutual commitment to support your energy choice, MCE and Pacific Gas and Electric Company (PG&E) have partnered to provide you with a comparison of typical electric rates, average monthly charges and generation portfolio contents. This comparison is based on a rate that is representative of our commercial customers.

If this comparison does not address your specific rate, please visit us online at mceCleanEnergy.com or pge.com/cca.

Understanding your energy choice

2013 Commercial Electric Rate Comparison, A-1 and COM-1 Non-TOU

	PG&E	MCE Light Green 50% Renewable Energy	MCE Deep Green 100% Renewable Energy
Generation Rate (\$/kWh)	\$0.08366	\$0.07405	\$0.08405
PG&E Delivery Rate (\$/kWh)	\$0.11006	\$0.11006	\$0.11006
PG&E PCIA/FF (\$/kWh)	N/A	\$0.00547	\$0.00547
Total Electricity Cost (\$/kWh)	\$0.19372	\$0.18958	\$0.19958
Average Monthly Bill (\$)	\$229.06	\$224.17	\$235.99

Monthly usage: 1,182 kWh

Rates are current as of June 15, 2013

This compares electricity costs for a typical commercial customer in the MCE/PG&E service area (Marin County and Richmond) with an average monthly usage of 1,182 kilowatt-hours (kWh). This is based on the recent 12-month billing history for all customers on A-1/COM-1 non-TOU rate schedules for PG&E's and MCE's published rates as of June 15, 2013.

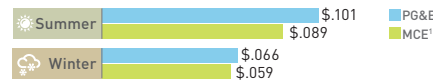
Generation Rate is the cost of creating electricity to power your home. The generation rate varies based on your energy provider. PG&E generation rates do not include temporarily deferred costs associated with greenhouse gas (GHG) compliance under the California Cap-and-Trade Program. These costs will be added to PG&E generation rates in 2014. MCE Generation Rates currently include these costs and MCE customers will not pay deferred costs in 2014.

PG&E Delivery Rate is a charge assessed by PG&E to deliver electricity to your home. The PG&E delivery rate depends on your electricity usage, but is charged equally to both MCE and PG&E customers. This rate does not reflect reductions associated with the sale of GHG allowances under California's Cap-and-Trade Program, which will be included in 2014.

PG&E PCIA/FF represents the Power Charge Indifference Adjustment (PCIA) and the Franchise Fee Surcharge (FF). The PCIA is a charge to cover PG&E's generation costs acquired prior to a customer's switch to a third-party electric generation provider. PG&E acts as a collection agent for the Franchise Fee Surcharge, which is levied by cities and counties for all customers.

Electric Generation Rates

Price (\$) per kWh



PCIA/FF fees are not included in generation rates. Chart is for illustrative purposes only and is not to scale.

*MCE Deep Green customers pay an additional \$.01/kWh.

2012 Electric Power Generation Mix*

Specific Purchases	Percent of Total Retail Sales (kWh)		
	PG&E	MCE Light Green	MCE Deep Green
Renewable	19%	53%	100%
• Biomass & Biowaste	4%	12%	0%
• Geothermal	5%	0%	0%
• Eligible hydroelectric	4%	2%	0%
• Solar electric	0%	1%	0%
• Wind	6%	38%	100%
Coal	0%	0%	0%
Large hydroelectric	18%	7%	0%
Natural Gas	25%	0%	0%
Nuclear	22%	0%	0%
Other	1%	0%	0%
Unspecified Power (kWh)	15%	40%	0%
TOTAL	100%	100%	100%

*2012 Data is from the "Annual Report to the California Energy Commission: Power Source Disclosure Program." The 2012 data is subject to an independent audit and verification that will not be completed until October 1, 2013.

2011 Total CO₂ Emissions from Electricity Sales per Megawatt-Hour**

PG&E	MCE Light Green	MCE Deep Green
393 pounds	389 pounds	0 pounds

**The CO₂ emission rates reflect the energy generation purchased by an energy provider. For the purposes of this chart, renewable energy, hydroelectric and nuclear resources have been considered GHG-free.

Coming soon: An energy bill that's easier to read

Account No: 1023456789-0
Statement Date: 03/15/2013
Due Date: 04/05/2013

Key account data

Account number and due date at the top of every page

1

Your Account Summary

Amount Due on Previous Statement	\$143.52
Payment(s) Received Since Last Statement	-143.52
Previous Unpaid Balance	\$0.00
Current Electric Charges	\$74.34
Current Gas Charges	104.55

Total Amount Due by 04/05/2013 \$178.89

Account summary

A snapshot of your bill in larger font, and easier to read and understand

2



ENERGY STATEMENT

www.pge.com/MyEnergy

Account No: 1023456789-0
Statement Date: 03/15/2013
Due Date: 04/05/2013

Service For:

John Sample
1234 Main Street
Anytown, CA 00000

Your Account Summary

Amount Due on Previous Statement	\$143.52
Payment(s) Received Since Last Statement	-143.52
Previous Unpaid Balance	\$0.00
Current Electric Charges	\$74.34
Current Gas Charges	104.55

Total Amount Due by 04/05/2013 \$178.89

Questions about your bill?

24 hours per day, 7 days per week
Phone: 1-800-743-5000
www.pge.com/MyEnergy

Local Office Address

750 Lindero St Ste 160
San Rafael, CA 94901

Your Enrolled Programs

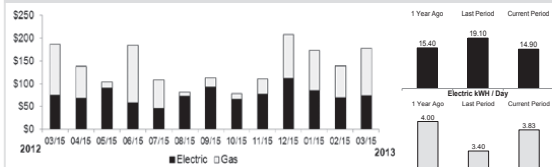
SmartRate™ Pricing Plan



Current charges include a discount of \$50.17 for Winter Gas Savings.

Monthly Billing History

Daily Usage Comparison



Visit www.pge.com/MyEnergy for a detailed bill comparison.

3

Evaluate your energy use

Quickly compare your energy usage over time

Important Messages

The California Alternate Rates for Energy (CARE) Program provides a monthly discount on energy bills for income-qualified household. Applying is free, easy and confidential. To see if you qualify, please visit www.pge.com/care or call 1-866-743-2273.

El programa de California alternate Rates for Energy (CARE) ofrece un descuento en la cuenta mensual de energía a los hogares que califican. Inscribirse en el programa es gratis, fácil y confidencial. Para determinar si califica, por favor visite nuestra página en el Internet www.pge.com/care o llámenos al 1-866-743-2273.

Please return this portion with your payment. No staples or paper clips. Do not fold. Thank you.



Account Number: 1023456789-0 Due Date: 04/05/2013 Total Amount Due: \$178.89 Amount Enclosed: \$

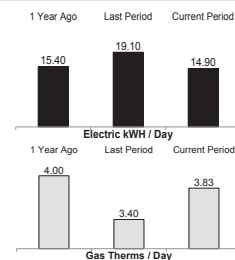
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SACRAMENTO, CA 95899-7300

JOHN SAMPLE
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Page 1 of 4
Recycled Paper
100% Post Consumer Waste

Daily Usage Comparison



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REGULATORY UPDATE

SUMMARY OF PROCEEDINGS

MEA BOARD MEETING – JULY 11, 2013

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

Cost Allocation and Procurement Affecting CCA

1) PG&E Energy Resource Recovery Account (ERRA) 2014..... A.13-05-015

<u>MEA's Interest:</u>	To address PG&E's proposed revenue requirements from both bundled and unbundled customers during 2014 and factors in revised PCIA calculations.	
<u>Actions Taken:</u>	<ul style="list-style-type: none"> - PG&E to file and serve Application and Testimony - MEA Data Request 1 for PG&E Workpapers - Application Noticed in the Daily Calendar - Response due to MEA's Data Request 1 - MEA Data Request 2 - Date for Objections to MEA Data Request 2 	<ul style="list-style-type: none"> May 31 May 31 June 5 June 14 June 19 June 26
<u>Next Steps:</u>	<ul style="list-style-type: none"> - Response Due to MEA Data Request 2 - Protest/Response to PG&E Application - PG&E Reply to Protests/Responses - Prehearing Conference - Intervenor Testimony - Rebuttal Testimony - Hearings - Opening Briefs - Reply Briefs - Proposed Decision - Final Decision - PG&E to put ERRA rates into effect * Indicates PG&E Proposed Schedule 	<ul style="list-style-type: none"> July 3 July 5 July 15 July 29* August 16* August 30* Early Sept.* September 20* September 27* November 7* December 5* January 1*

2) PG&E 2014 General Rate Case – Phase 2 A.13-04-012

<u>MEA's Interest:</u>	To address rate design and other issues applicable to CCA and MEA.	
<u>Actions Taken:</u>	<ul style="list-style-type: none"> - Prehearing Conference 	<ul style="list-style-type: none"> June 3
<u>Next Steps:</u>	<ul style="list-style-type: none"> - PG&E Updates Exhibits - Mandatory Settlement Conference 1 - DRA Serves Testimony - Intervenors Serve Testimony 	<ul style="list-style-type: none"> August 2* September 6* September 30* November 11*

- Mandatory Settlement Conference 2	December 6*
- All-party Rebuttal Testimony	December 20*
- Evidentiary Hearings	Jan. 13-24, 2014*
- Opening Briefs	Feb. 11, 2014*
- Reply Briefs	Feb. 25, 2014*
- Proposed Decision	May 26, 2014*
- Final Decision	June/July 2014*
- Rates Effective	May 1, 2014*
* Indicates PG&E Proposed Schedule	

3) PG&E Nuclear Decommissioning A.12-12-012

<u>MEA's Interest:</u>	Ensure that costs of nuclear decommissioning are appropriately allocated.	
<u>Actions Taken:</u>	- Scoping Memo and Ruling Issued	June 17
<u>Next Steps:</u>	- Reply Testimony on HBPP	July 12
	- SCE Supplemental Testimony (non-HBPP)	July 22
	- Rebuttal Testimony on HBPP	July 26
	- Evidentiary Hearings on HBPP	August 7-9
	- Opening Briefs on HBPP	September 13
	- Reply Testimony (non-HBPP)	September 20
	- Reply Briefs on HBPP	September 27
	- Rebuttal Testimony (non-HBPP)	October 11
	- Evidentiary Hearings (non-HBPP)	October 21-25
	- Proposed Decision (HBPP)	November 19
	- Opening Briefs (Non-HBPP)	November 22
	- Reply Briefs (Non-HBPP)	December 13

4) Petition for Rulemaking on Cost Allocation Issues P.12-12-010

<u>MEA's Interest:</u>	MEA has petitioned the CPUC to start a proceeding in which cost allocation, cross-subsidization and non-bypassable charge issues will be addressed.	
<u>Actions Taken:</u>	- Proposed Decision which would deny MEA's Petition for Rulemaking	June 11
	- Comments on Proposed Decision	July 1
<u>Next Steps:</u>	- Reply Comments on Proposed Decision	July 8
	- Proposed Decision on Commission Agenda	[July 11]

5) PG&E 2014 General Rate Case – Phase 1 A.12-11-009

<u>MEA's Interest:</u>	To address cost functionalization and other issues applicable to CCA and MEA.	
<u>Actions Taken:</u>	- Workshop on SED Reports	June 12
	- Rebuttal Testimony Served (incl. responsive Testimony to SED Reports)	June 28
<u>Next Steps:</u>	- Evidentiary Hearings begin	July 15
	- Evidentiary Hearings end	August 9
	- Settlement Conference	August 12-13
	- Comparison Exhibit	August 23
	- Opening Briefs	September 6
	- Reply Briefs	September 27
	- Update Filing	October 4
	- Update Hearing	October 14
	- Proposed Decision	November 19
	- Decision	December 19

6) EPIC Implementation Applications A.12-11-001, *et al.*

<u>MEA's Interest:</u>	To insure that the program administrators (PG&E, SCE, and SDG&E) are applying these funds to programs in a competitively neutral fashion.	
<u>Actions Taken:</u>	- Comments on Proposed Decision	June 13
	- Reply Comments on Proposed Decision	June 18
<u>Next Steps:</u>	- Final Decision on Commission Agenda	[July 11]

7) PG&E Green Option A.12-04-020

<u>MEA's Interest:</u>	Ensure appropriate cost allocation of PG&E "Green Option."	
<u>Actions Taken:</u>	- Parties' Response to MEA's Motion for Consolidation with A.12-01-008	June 5
<u>Next Steps:</u>	- Awaiting Action on MEA Motion for Consolidation - Awaiting ALJ Ruling on procedural next steps	

8) 2012 Long Term Procurement Plan (LTPP) R.12-03-014

<u>MEA's Interest:</u>	Involvement regarding the cost allocation mechanism (CAM) and other matters.	
<u>Actions Taken:</u>	-	

<u>Next Steps:</u>	<u>Track 2 – System Needs:</u> <ul style="list-style-type: none"> - CAISO Deterministic Study - SCE Stochastic Study - SCE/CAISO Opening Testimony on Their Studies - All Parties Opening Testimony and Reply to SCE and CAISO - Rebuttal Testimony - Prehearing Conference - Hearings - Briefs - Reply Briefs - Proposed Decision 	<ul style="list-style-type: none"> October September September 20 November 1 November 15 November Dec. 2-6 & 9-13 TBD TBD March 2014
	<u>Track 3 – Procurement Rules:</u> <ul style="list-style-type: none"> - Proposed Decision on Procurement Rules 	<ul style="list-style-type: none"> Summer 2013
	<u>Track 3 – Bundled Procurement:</u> <ul style="list-style-type: none"> - Awaiting Scoping Memo and Schedule regarding Bundled Procurement 	<ul style="list-style-type: none"> Timing Unclear
	<u>Track 4 – San Onofre Nuclear Power (SONGS):</u> <ul style="list-style-type: none"> - CAISO Study and Opening Testimony - SCE Study and Opening Testimony - All Parties Opening Testimony and Reply to SCE and CAISO - All Parties Rebuttal Testimony - Prehearing Conference - Evidentiary Hearings - Briefing Schedule - Last Date to request Final Oral Argument - Proposed Decision 	<ul style="list-style-type: none"> August 5 August 26 September 23 October 7 October 2013 Oct 28-Nov 1 TBD Later of Dec 1 or date of Reply Briefs Dec or Feb

9) PG&E Economic Development Rate.....A.12-03-001

<u>MEA's Interest:</u>	This rate subsidy is intended to prevent companies from departing from California due to high energy costs; the rate is applied inequitably to CCA customers.
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	- Awaiting Proposed Decision

10) GHG Costs (AB 32 Implementation) R.11-03-012

<u>MEA's Interest:</u>	MEA will monitor this new Commission rulemaking which will address potential utility cost and revenue issues associated with greenhouse gas (GHG) emissions.	
<u>Actions Taken:</u>	<u>Track 1: GHG Revenue – Finalization of EITE and small business revenue allocation formulae</u> - Comments on Proposed Decision re: MEA Pet Mod June 17 - Reply Comments on Proposed Decision June 24 - Final Decision June 27 <u>Track 1: GHG Revenue – Finalization of EITE and small business revenue allocation formulae</u> - Public workshop to discuss proposal - Energy Division final Staff Proposal May/June - Comments on final staff proposal June 24	
<u>Next Steps:</u>	<u>Track 1: GHG Revenue – Implementation Plans</u> - Proposed Decision on Utility Implementation Plans [June] <u>Track 1: GHG Revenue – Finalization of EITE and small business revenue allocation formulae</u> - Proposed Decision Expected July 8 <u>Track 2: Low Carbon Fuel Standard (LCFS) Credit Revenue Allocation</u> - Proposed Decision on LCFS Proposals [September] <u>Track 3: GHG Procurement and Revenue Allocation for Gas Utilities</u> - PHC to discuss process to address GHG procurement and revenue issues for gas utilities	

11) CHP Settlement..... A.08-11-001, et al.

<u>MEA's Interest:</u>	Address issues raised by the combined heat and power (CHP) settlement approved in December 2011.	
<u>Actions Taken:</u>	- Comments on Alternate Draft Resolution E-4529 (Peevey) June 13 - Comments on Alternate Draft Resolution E-4569 (Peevey) June 13 - Comments on Revised Resolution E-4529 June 17 - Comments on Revised Resolution E-4569 June 17 - Alternate Resolutions E-4529 and E-4569 (Ferron) June 25	
<u>Next Steps:</u>	- Comments on Alternate Resolutions E-4529 and E-4569 (Ferron) July 15 - Commission Vote on Resolutions E-4529 and E4569 [July 25] • Original Resolution	

- Alternate Resolution (Peevey)
- Alternate Resolution (Ferron)

12) SDG&E SunRate..... A.12-01-008

<u>MEA's Interest:</u>	Ensure appropriate cost allocation of SDG&E's "SunRate," which is similar to PG&E's "Green Option Tariff." MEA is engaged on a limited basis in this proceeding.	
<u>Actions Taken:</u>	- Parties' Response to MEA Motion for Consolidation with A.12-04-020	June 5
	- Email Ruling Postponing Testimony	June 20
<u>Next Steps:</u>	- Awaiting Action on MEA Motion for Consolidation	[TBD]
	- Direct Intervenor Testimony	[TBD]
	- Rebuttal Testimony	[TBD]
	- Evidentiary Hearings	[July 29-30]
	- Second set of Opening Briefs, request for oral argument	[July 30]
	- Second set of Reply Briefs	[August 15]

Rulemakings on Standards

13) Residential Rate Rulemaking..... R.12-06-013

<u>MEA's Interest:</u>	MEA will be participating to ensure that residential rate design elements facilitate customer choice.	
<u>Actions Taken:</u>	- ALJ Ruling on Revised Procedural Schedule	June 18
	- Residential Ratemaking Workshop	June 25
	- Bill Impact Calculators (IOUs)	July 1
<u>Next Steps:</u>	- ALJ Response to MEA Motion anticipated	[June]
	- Opening Comments	July 12
	- Reply Comments	July 26
	- Briefing Cycle	August 7 & 14
	- Proposed Decision Issued	October

14) Code of Conduct CCA Proceeding – SB 790 R.12-02-009

<u>MEA's Interest:</u>	Addresses requirements set forth in SB 790 for the commission to consider and adopt a Code of Conduct applicable to IOUs.	
<u>Actions Taken:</u>	- Commission Rejects PG&E Advice Letter 4210-E Regarding CCA Marketing	June 7
<u>Next Steps:</u>	-	

15) Resource Adequacy..... R.11-10-023

<u>MEA's Interest:</u>	Track revisions to resource adequacy rules as they apply to CCA.	
<u>Actions Taken:</u>	Phase 2 – Local Capacity, Flexible Capacity, etc.	
	- Comments on Proposed Decision	June 17
	- Reply Comments on Proposed Decision	June 24
	- Final Decision adopting 2014 LCR and other topics within Scope	June 27
	<u>Capacity Market</u>	
	- Ruling Announcing Workshop	June 26
<u>Next Steps:</u>	<u>Capacity Market</u>	
	- CPUC/CAISO RA Paper to be released	[July 8]
	- CPUC/CEC Workshop on Electricity Infrastructure Issues Resulting from SONGS Closure	July 15
	- CPUC/CAISO Joint Workshop (Folsom)	July 17

16) Energy Storage..... R.10-12-007

<u>MEA's Interest:</u>	This Phase 2 would “develop the costs and benefits for [energy storage systems] and establish how they should be allocated.”	
<u>Actions Taken:</u>	- Assigned Commissioner's Ruling Proposing Storage Procurement Targets and Mechanisms	June 10
	- All-Party Meeting	June 25
	- Cost-Effectiveness Workshop	June 28
<u>Next Steps:</u>	- Comments on ACR	July 3
	- Reply Comments on ACR	July 19
	- Proposed Decision	[September]
	- Commission Consideration of PD	[October 3]
	- Commission Consideration of continuing proceeding or opening subsequent Energy Storage Rulemaking	By Dec. 31
	- IOUs file Tier 3 Advice Letter with Proposed Energy Storage Auction Protocol	January 1
	- Commission consideration of Advice Letter	Q2 2014
	- First Energy Storage Auction	June 30
	- IOUs present results of Storage Auction to PRG and request approval of winning contracts	Q3-4 2014
	- Workshop evaluating data from first energy storage auction	Q4 2014
	- IOUs file Tier 3 Advice Letter with Proposed Second Energy Storage Auction Protocol	Q3 2015
	- Commission consideration of Advice Letter	Q1 2016
	- IOUs hold second energy storage auction	June 30, 2016

Energy Efficiency**17) Applications for 2013-2014 Energy Efficiency Programs A.12-07-001, *et al.***

<u>MEA's Interest:</u>	This proceeding is the venue for MEA's application for energy efficiency funds pursuant to §381.1(a) for the 2013-14 funding cycle.	
<u>Actions Taken:</u>	- Disposition Approving Advice Letters MEA-003-CCA and MEA-005-CCA (MEA 2013-14 EE Program)	June 10
	- Proposed Decision to Implement 2013-14 Energy Efficiency Financing Pilot Programs	June 25
<u>Next Steps:</u>	- Comments on PD of ALJ Darling	July 15
	- Reply Comments on PD of ALJ Darling	July 22
	- Proposed Decision on Commission Agenda	[July 25]

18) Efficiency Savings and Performance Incentive (ESPI) Design R.12-01-005

<u>MEA's Interest:</u>	Determine methodologies for incentives for energy efficiency programs.	
<u>Actions Taken:</u>	-	
<u>Next Steps:</u>	- Awaiting Commission Ruling or Proposed Decision on ESPI	

19) Energy Efficiency and EM&V R.09-11-014

<u>MEA's Interest:</u>	Address EE program issues as they arise; EE Funds for CCAs	
<u>Actions Taken</u>	-	
<u>Next Steps:</u>	- Awaiting next steps on SB 790/EE components per 03/25 Ruling - Awaiting revisions to EE Policy Manual per 03/25 ruling - Awaiting guidance next steps for 2015 and Beyond CCA EE Programs	

Data and Smart Grid Proceedings**20) Customer Data Access Proceeding A.12-03-002, *et al.***

<u>MEA's Interest:</u>	Ensure fair access of CCAs to data, including data backhaul mechanisms.
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	- Awaiting Proposed Decision

21) IOU Smart Grid Deployment Plans A.11-06-006, A.11-06-029, A.11-07-001

<u>MEA's Interest:</u>	Ensure appropriate cost allocation of the approximately \$1.3 billion to \$2.05 billion PG&E is requesting for this program.	
<u>Actions Taken:</u>	- Proposed Decision Issued	June 11
	- Comments on Proposed Decision	July 1
<u>Next Steps:</u>	- Reply Comments on Proposed Decision	July 8
	- Proposed Decision on Commission Agenda	[July 11]
	- Proceeding to be closed per Extension of Statutory Deadline	August 1

22) Smart Grid Privacy Policies R.08-12-009

<u>MEA's Interest:</u>	Determination of what privacy and security rules for energy usage data should be applicable to CCAs.	
<u>Actions Taken:</u>	<u>Phase 3 – Energy Data Center:</u> - ALJ Email Ruling Extending Phase 3 Dates	June 20
<u>Next Steps:</u>	<u>Phase 3 – Energy Data Center:</u> - Working Group Report - Comments on Working Group Report - Reply Comments on Working Group Report - Proposed Decision Anticipated - Commission Decision Anticipated	July 10 July 29 August 5 [August] [September]