



**Marin Clean Energy
Board of Directors Meeting
Thursday, October 2, 2014
7:00 P.M.**

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

Agenda Page 1 of 2

Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Sloan C. Bailey
Town of Corte Madera

Larry Bragman
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

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

1 (888) 632-3674
mceCleanEnergy.org

781 Lincoln Ave., #320
San Rafael, CA 94901

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 9.4.14 Meeting Minutes
 - C.2 Monthly Budget Report
 - C.3 Approved Contracts Update
 - C.4 MCE Power Content Label and Attestation
 - C.5 Records Retention
 - C.6 1st Addendum to 2nd Agreement with Troutman Sanders
5. Third Amendment to Lease with San Rafael Corporate Center (Discussion/Action)
6. Resolution 2014-06 Approving the City of Benicia as an MCE Member and Authorizing: 1. Amendment 9 to the



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- MCE JPA Agreement and 2. Submittal of Amendment to MCE Revised Implementation Plan Adding the City of Benicia (Discussion/Action)
7. Power Purchase Agreement with RE Mustang, LLC (Discussion/Action)
8. Energy Efficiency Update (Discussion)
9. Regulatory and Legislative Updates (Discussion/Action)
10. Communications Update (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn



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**MARIN CLEAN ENERGY
BOARD MEETING
THURSDAY, September 4, 2014
7:00 P.M.
SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present: Kate Sears, County of Marin, Vice Chair
Bob McCaskill, City of Belvedere
Sloan Bailey, Town of Corte Madera
Larry Bragman, Town of Fairfax
Kevin Haroff, City of Larkspur
Garry Lion, City of Mill Valley
Denise Athas, City of Novato
Gayle McLaughlin, City of Richmond
Carla Small, Town of Ross
Ford Greene, Town of San Anselmo
Emmett O'Donnell, Town of Tiburon

Absent: Damon Connolly, City of San Rafael
Ray Withy, City of Sausalito

Staff: Dawn Weisz, Executive Officer
Elizabeth Kelly, Legal Director
Alex DiGiorgio, Community Affairs Representative
Greg Brehm, Director of Power Resources
Michael Maher, Maher Accountancy
John Maher, Maher Accountancy
Kirby Dusel, Technical Consultant
John Dalessi, Technical Consultant
Brian Goldstein, Technical Consultant
Sarah Estes-Smith, Administrative Associate
Emily Goodwin, Director of Internal Operations
Darlene Jackson, Clerk

Public Session: 7:04 PM

Agenda Item #1- Board Announcements (Discussion)

Director Sears called the meeting to order and extended a welcome to Mayor Gayle McLaughlin, Alternate for the City of Richmond.

Agenda Item #2 – Public Open Time (Discussion)

None

Agenda Item #3 – Report from Executive Officer (Discussion)

Executive Officer Dawn Weisz reported on this item.

Ms. Weisz welcomed everyone back from our August hiatus and explained that we have a full agenda tonight. She welcomed Brad Wagenknecht and Keith Caldwell, ME's Napa Board Member and Alternate, respectively. She shared that MCE is hopeful to have CPUC certification of the Revised Implementation Plan (reflecting the incorporation of Napa) by the next Board meeting and then have Brad sitting on the dais.

Ms. Weisz announced the anti-CCA bill that was under consideration this legislative session, AB 2145, has died on the Senate floor. MCE owes thanks to a lot of folks in helping this effort be successful. She extended a huge thank you to MCE staff, Keith Caldwell and Brad Wagenknecht, Directors Bailey, Green and Butt, and to those who brought this issue to their local councils for letters of opposition to the bill.

Director Sears acknowledged there was a tremendous amount of work by MCE and people all over the State of California on this bill. She believes the upside to the Bill is that it was a great opportunity to educate a lot of people about CCAs. There was an upside to the educational opportunity presented by the fight against this bill and now people are better informed about how important CCAs are in California. MCE and the Board should feel good about the result.

Ms. Weisz talked about the Property Assessment Clean Energy ("PACE") that is available in some parts of California which allows folks to do energy upgrades to their home or business; these can include renewable energy installations or energy efficiency upgrades and participants would then place those expenses as a property assessment on their property.

PACE Programs have been very successful in the Sonoma County area and are starting to gain traction in other parts of the State. There was a recent letter sent out by the Federal Housing Finance Agency ("FHFA") regarding PACE Programs. This letter was directed to the City of Mateo because they are moving forward on a PACE Program. The letter outlined the position of FHFA regarding how the lien placement may affect PACE properties. It doesn't state a new position of the FHFA, but MCE wanted folks to know about it because the Board may get related questions from other local elected officials or city or town managers.

MCE will be sending out a memo to City Managers within the next few days that outlines the FHFA letter and some of the talking points in response to it. Dawn noted that there is no change in policy at FHFA, but there does continue to be a situation that when properties have an assessment, they typically need to be paid off at the time of sale.

Ms. Weisz reported that there continues to be pressure from the Governor's office to try and change the FHFA's position regarding PACE and she will keep the Board posted on any new developments.

Director Sears indicated for all who have not read the letter, the FHFA is urging communities to inform potential borrowers about their policies. It seems if one did that, it might be good to also inform

borrowers of contact information of their Congressman so they can contact them and tell them what they think about the FHFA. She noted that a little grassroots pressure is always a good thing.

Director Athas stated the Marin Association of Realtors should be contacted for support as well. That is something they can stand behind and ask their California Legislative Association of Realtors to have them work on that political action via lobbyists in Sacramento.

Ms. Weisz mentioned that some of the Board participated in an MCE staff Brown Bag session where we had a presentation by Frank Lindt, the former General Counsel for the CPUC. It was a fantastic presentation. She wanted folks to know that the session was recorded so a copy will be made available to those who are interested in receiving it. Mr. Lindt spoke about the energy crisis and what was happening behind the scenes. Ms. Weisz indicated if any Board members are interested in receiving a copy they should contact Darlene.

Ms. Weisz reminded everyone of the Board Retreat that is scheduled for Thursday, September 18th. Folks are welcome to show up around 9:00 to grab some breakfast as the meeting will begin promptly at 9:30AM and wrap up around 4:00PM. Board members were asked to RSVP by September 11th if they had not already done so and to contact Darlene with any questions.

She also reminded those members of the Ad Hoc Special Consideration Committee of the meeting that is set for Tuesday, September 23rd from 10:00AM – 11:00AM in MCE's Conference Room.

Ms. Weisz announced MCE is planning a Field Trip to the Geysers to visit the Calpine facility, a local generation site of one of our most recent PPAs. The trip is scheduled for October 23rd, 8AM – 5PM. It is a long trip that will take a full day and a bus will be available to transport folks up to the site. Lunch is included along with a lot of good information and education on the way. There are a limited number of seats available on the bus so if you are interested in attending that event let Darlene know.

Ms. Weisz announced the Draft Climate Action Plan Update for the County of Marin has been posted to the website and contributors are looking for feedback. They will be hosting a public workshop on Monday, October 6th in the Marin Civic Center Exhibit Hall. There are many useful findings in the plan, some of which relate to their energy procurement and some related to the positive impacts MCE power supply has had on reaching or exceeding goals of the Climate Action Plan.

Director Sears asked Ms. Weisz to elaborate on the Board packet document regarding the MCE and North Bay Pre-Apprenticeship Program. Ms. Weisz shared that this item is on the Technical Committee Agenda set for Monday, September 8th but explained this is a proposal that has come to MCE from Bill Scott who Director Sears recommended we contact. It looks at ways to stimulate more apprenticeship program activity in Marin County. He will also be working with local high schools on developing the program and more details will be discussed at Technical Committee on Monday including a recent grant submission to support those efforts. Some graduates of the program will be heading down the track to join such trades as the I.B.E.W. and various other organized labor. It is certainly something that MCE wants to support in line with our approach to local jobs and union labor.

There were no questions from the Board or the public.

Agenda Item #4 – Consent Calendar (Discussion/Action)

- C.1 7.3.14 Board Minutes
- C.2 Monthly Budget Report
- C.3 Monthly Contracts Update
- C.4 First Addendum to Second Agreement with Braun, Blaising, McLaughlin & Smith

M/s Bragman/Lion (passed 11-0-0) approved all items on the consent calendar. Directors Connolly and Withy were absent.

Agenda Item #5 MCE Audited Financials 2014-2013 (Discussion)

Dawn Weisz, Executive Officer introduced this item and the presenters, Maher Accountancy.

Ms. Weisz announced that every year MCE compiles audited financials through a third party and tonight we are presenting the results of that compilation. It is not an action item but we wanted to share the results and provide the Board an opportunity for questions.

John Maher, Accountant, shared brief details of the audited financials. Mr. Maher indicated they prepare the routine financials as non-independent accountants and MCE hires independent accountants to complete the audited financials. Mr. Maher directed the Board to the first two pages of the document, the auditors' report.

Mr. Maher shared that the report explains who is responsible for what, what various entities do in the process; the conclusion is the financial statement is fairly presented: the valuations are fair, the disclosures are proper and communications are clear. This means the financials were prepared in accordance with generally accepted accounting principles as required and used within the United States.

Mr. Maher further shared and explained one particular high-level overview and analysis in the report: a discussion of increases in the organization's net assets or as noted in this report, "Fund Equity." Fund equity is the excess of revenues/inflows over expenditures/outflows. There was a healthy modest increase in outflows, as was planned, but during the year the organization did have a large increase in revenues and the balance sheet changed quite a bit with the addition of the City of Richmond as a member.

The City of Richmond came in half way through the summer and MCE's fiscal year ends in March. Starting in April, the commercial rates are on the lower side and during the spring/summer they go up followed in the second half of the year with a decrease.

When Richmond came in with a relatively high volume, at that point in the annual cycle where the rates are a bit higher, MCE had a large increase in revenue but a modest increase in the gross margin or addition to the net assets. This is nothing that is abnormal or surprising. In the 2014-15 year we will be able to see the benefit of the full year and enjoy a larger volume with the better margins that we experience with the full summer rates.

Mr. Maher further discussed balance sheet comparisons for the last 3 years. There have been increases in cash from \$18M to \$22M and Mr. Maher explained that part of that increase is due to receivables. With an organization like MCE, when a new phase is launched by bringing in a new community, customers come in and maybe at a 60-75 day cycle between the time they are receiving energy and paying their bills,

the receivables grow during that increased volume faster than cash flows. That takes a little bit of time to digest because the suppliers generally want to have their money within 25-30 days of supplying. We have some equity/cash needs to reserve to prepare and accommodate for these growth spurts as new communities join MCE.

The key is the audit went well. The auditors liked the disclosure, the transparency and presentation. They had no concerns about internal controls and basically gave their stamp of approval with no adjustments. Bottom line, there is a clean opinion, finances are strong, the audit went well and this report should be very presentable to lenders or suppliers who would be looking at MCE's finances.

There were no questions or comments from the Board or the public.

Agenda Item #6 - Land Option and Lease Agreements with Chevron Products Company
(Discussion/Action)

Greg Brehm, Director of Power Resources presented this item.

Mr. Brehm reminded the Board that this item was brought to them at the July 3, 2014 meeting. The agreement and MCE Board's concerns were brought to Troutman Sanders, MCE's external counsel, to receive additional feedback regarding indemnification of liability for any existing contamination on the site. Ben Fisher, Counsel at Troutman Sanders, was on the conference line prepared to answer questions.

Counsel is of the opinion we are now well covered on this issue. The lease option has only a one-way indemnification whereby we are indemnifying Chevron for any liability resulting from testing that we do but the lease contains a cross-indemnification where both parties are indemnified by the other against liability for new contamination. However, liability for prior contamination remains with Chevron. The current draft lease provides additional new language limiting MCE to cooperating with Chevron in defending certain liability at no cost to MCE.

The staff report lists language that was added to this effect in section 6.2 of the lease itself that the landowner will take efforts to keep the facilities in order and defending against liability for existing contamination on that site; and more indemnification language in section 8.32 on MCE indemnification.

Ms. Weisz shared a couple of exciting things about this transaction. MCE had been looking for a location throughout our service territory for local solar for the purpose of building and owning a project. About a year and a half ago the Board made a decision to defer 50% of our deep green revenue into a local renewable revenue fund to use for building local generation projects. There are a couple sites MCE has been exploring and one that is still in process is the Richmond Port. This is another one that came to us as we were looking for a local solar site.

Chevron came to us with quite a bit of land for potential solar development. One of the great things about the site is it is definitely a Brownfield reuse site which has limited other potential use options. 60 acres will allow us to start with a small 2 MW facility initially but then incrementally add additional phases of more solar as needed. It also creates the ability for us to have less of a "stop-start" on the job development front. The great thing about being able to do multiple phases is that job opportunities will exist at different phases over multiple years. The opportunities for the site are large and the cost of the lease is only \$1 per year. Chevron has allowed us to use the site because they see it as a public community benefit.

Director Sears asked about next steps for this project. Mr. Brehm explained that once the option is approved MCE will submit the interconnection application to PG&E and then complete a site survey delineating all the areas MCE will take possession of per the lease, excluding any wetlands and the land fill maintenance infrastructure areas which are to be excluded from our site and remain under Chevron's control. There will be fencing and access gates installed. We will develop a work plan that we will take to Chevron and their safety team to get their approval. We will do some ground testing to see if there is any contamination but we have a plan to generally stay above the ground as much as possible. On most of the landfill sites there won't be any soil penetration but there are some areas where we will penetrate to accommodate larger structures while still ensuring there are no contaminants that might have future impact on health and safety of workers or the community.

Once the work plan is approved, MCE will then do testing to determine if it is feasible or not depending on what is found. Director Sears asked if MCE is doing all of the work or if we are partnering with a developer. Mr. Brehm said that MCE would probably bring in a developer that has more experience. MCE is currently doing pre-development work to develop basic reports stating what we can be built on the site, and we will then bring in a developer to carry the project to completion.

Director Lion mentioned per section 3.1 of the lease we have the opportunity for solar testing but it wasn't clear as to what recourse we have. He also asked that since this project is still in the feasibility stage, will MCE be able to terminate if this things don't go well. Mr. Brehm responded, yes we will be able to terminate.

Director O'Donnell asked who handles the long-term maintenance and security on the site. Mr. Brehm said that while Chevron would have access to the site, long-term maintenance and security on the site would be MCE's responsibility.

Director Bragman asked in regard to the landfill cap and the issue about penetrating the cap, is there any idea as to what type material we are dealing with, asphalt, etc. Mr. Brehm indicated the landfill area does have a membrane layer and then 18 inches of fill on top of that. It is a contoured site now and we are anticipating adding additional fill to that to make it level. The way it is currently laid out you couldn't put a ballasted system on as it would slip off the slopes; we will probably add additional fill on top of the existing cap.

Director Bragman said he would assume that whoever is doing this work has some experience handling Brownfields and even the equipment used to install the panels. Per Mr. Brehm, with the ballasted system we are looking at one system, with a small footprint, a plug and play system that holds two panels and can be carried easily by two men.

Director Bragman asked about the lease term. Mr. Brehm indicated the lease is a 25 year term with an option to renew for 5 additional years.

A member of the public, from the City of Richmond, shared that the City of Richmond has a history of contaminated sites that have impacted the community. He spoke at length about Chevron's history of owning the land in question. In terms of Chevron owning that site, it is a landfill and in regard to testing, if you have a site history or characterize a site history, how would you know or be objective enough an entity to know what to test for?

Director Sears asked Mr. Brehm to address the concern. Per Mr. Brehm the goal is to not penetrate that cap. The site is an officially closed landfill so there was extensive testing done before the closure and in the closure plan. The site has been closed for approximately 20-25 years and there is a maintenance requirement to maintain that cap. There is an extensive report that has been reviewed of all the contaminants that were found on the site before it was capped. They have a pretty good idea what exists there now and the depths of the soil to know how far they can go.

Director Sears asked if the testing would be done based on that list of contaminants. Mr. Brehm indicated MCE would be testing for everything as they do not know if the fill that sits on top of the cap has not since been contaminated.

Director Greene asked if there is any idea as to what is contained underneath the cap. Per Mr. Brehm about 24 acres of landfill was once a fertilizer pond so there are probably chemicals used in fertilizer. The contoured site contained petrochemicals. He explained there is a report indicating the various chemicals used on the site and would be happy to share that report with the Board.

Director Small asked if during the construction phase there was damage to the cap would there be any liability on our part. Per Ms. Weisz we will be hiring a developer to do that portion of the work and would make sure that liability was part of that agreement with the developer to maintain the integrity of the cap.

Alternate Director McLaughlin asked in terms of hiring for the construction and for the maintenance are there any plans to hire locally. Per Mr. Brehm MCE will adhere to the City of Richmond's local hire policies and also as a part of the lease agreement we will try for a minimum 50% local hires.

There were no additional questions regarding liability or indemnification so Ben Fisher ended the conference call.

Director Sears indicated that she was happy that there had been a couple of rounds of conversation about the concerns surrounding the Chevron lease agreement. Challenges aside, she expressed that she feels this is an excellent opportunity to be able to have a significant solar facility.

Beth Kelly, Legal Director clarified the motion would be to authorize staff to finalize and the Executive Officer to execute the lease option agreement with Chevron Products Company and the Solar Energy Facilities Site Lease with Chevron Products Company.

M/Greene/McLaughlin (11-0-0 passed) authorized MCE Staff to Finalize and the Executive Officer to Execute the Lease Option Agreement with Chevron Products Company and the Solar Energy Facilities Site Lease with Chevron Products Company. Director Connolly and Withy were absent.

Agenda Item #7 – Power Purchase Agreement with EDP (Discussion/Action)

Greg Brehm, Director of Power Resources presented this item.

Mr. Brehm shared that this PPA is a part of MCE's 2014 Open Season process. This is an opportunity for a substantial wind project; it is new construction and a California-based new generation resource. The project is about 198 mw and we will be off-taking about half of that project capacity.

In discussions with the Ad Hoc Contracts Committee and the expansions currently being considered as the open season is unfolding, MCE asked the Ad Hoc Contracts Committee to add the volumes needed for expansion and also consider possibly converting some of our initial bucket 2, bucket 3 purchases and voluntary purchases, and replace them with this bucket 1 resource. This would be a significant shift away from our initial plan of using the bucket 3 and bucket 2 resources to a bundled in-state resource (all bucket 1).

Mr. Brehm reviewed the different buckets previously discussed. He explained that bucket 1 is when energy and renewable energy credits (RECs) are transferred contemporaneously in real time; a bucket 2 product is where the RECS are generated at some point in time and then the physical power cannot be transmitted directly and is either shaped or firmed to match an existing load profile. The RECs are re-bundled with power that is delivered in a timeframe that suits our needs. The bucket 3 transaction would be just the RECs only with no actual energy purchase.

We are now in compliance period 2 in the RPS program so our bucket 3 is limited to only 15% of our overall load. The previous three years it was 25% and after 2016 it will drop to 10%. Over time the ability to use bucket 3 recs will drop off so we will try and increase our demand or use of bucket 1 resources sooner than later to adapt smoothly to the requirements.

Mr. Brehm shared that this product was a very competitive price compared to what current market prices were and with a very low premium for the bucket 1 resource. This is a four year power purchase agreement (PPA) coming online in July 2015. The project has an existing PPA with another counterparty after 2018.; So we will have a half year of production and then 3 full years of production.

The project itself will generate enough power annually to power about 37,000 customers and residential homes which is a very substantial portion of our load.

Mr. Brehm shared the project is called the Rising Tree Wind Farm because of its location in Kern County. It is currently under construction and there will be approximately 300 employees on the job site and 23% of those are expected to be union employees. Another 40-50% are expected to be local hires in the area. There is roughly \$80M of economic impact for the area.

The PPA will account for roughly \$1.1 - \$1.2M per month during the peak months of production so that will account for a substantial part of our budget for a few years to come.

Mr. Brehm further discussed EDP Renewables is a European-based developer from Portugal with extensive experience with wind projects globally. They have about 23,000 mw installed generation capacity worldwide and have about 7800 mw of capacity in the United States, most of that with generation. Their team is very experienced, and has been good to work with in negotiations. The wind based product is a variable resource so there is a program with the CAISO called the Variable Energy Resource Program. It will allow us to bring resources in for a minimum bid and the CAISO will use a forecast that they develop and schedule that energy for you. Wind energy is bid a day ahead of time so you have no visibility to the actual production, but with this type of scheduling you will have pretty much real time scheduling and if there is any negative dispatches the CAISO system will automatically turn off and turn back on when it is dispatched again which helps mitigate the inherent risk of scheduling variable resources such as wind.

Kirby Dusel, Technical Consultant further explained that this wind variability could pose a financial risk to counterparties like MCE and this program that CAISO has created minimizes that risk. As Mr. Brehm pointed out, this project will be participating in this CAISO program and thereby reduce such risks to MCE. This is, just to underscore again, in many respects a game as we're now not only shifting to more bundled resources, but also in-state resources. That is a significant transition and hopefully one we can maintain moving forward. He believes it increases the value of the product delivered to MCE customers much more.

Director Sears asked Mr. Dusel to talk a bit more about the scheduling portion and how it works in terms of handling that much energy on a variable basis. Mr. Dusel pointed out there is a forecast and under this program that schedule is essentially prescribed by the CAISO. They are taking into consideration meteorological effects and various other issues that would influence the production of wind energy at a particular site and essentially prescribing a schedule as long as you schedule according to their guidelines. Then you receive these financial benefits in the form of reduced and balanced energy costs. It has been a cooperative relationship between the CAISO and the generators in the Variable Energy Resource Program which is a new version of a similar program CAISO used to offer called Participating Intermittent Resource Program ("PIRP"). It is designed to accommodate these sorts of variable resources that do produce on a very intermittent basis. There is an acknowledgement of the value that these resources have from a policy perspective and there is obviously a huge interest in developing renewable energy assets in off-takers like MCE.

John Dalessi, Technical Consultant, shared that the changes made by CAISO to support these types of resources is consistent with the State's policy to move to a higher renewable content statewide. CAISO has moved to a 15 minute scheduling market so we are able now to schedule output from these generators much closer to real time. In the past, we've had to do a longer term forecast which was less accurate so you were subject to more imbalance and potential risk. With the new market designs you're able to monitor your wind resources in real time effectively and put a schedule in that is near term and that will avoid some of the imbalance risk.

Director Sears asked if this was EDP's first California project and Mr. Brehm indicated yes it is their first California project. Mr. Brehm also offered the generator provides every hour of the forecast of the next 60 hours going forward and then the CAISO uses that to feed into their models to forecast from there and they will adjust. CAISO actually makes the decision about what to schedule based on the generator's forecast and based on CAISO's own model.

Director O'Donnell asked about 2015 pricing. Mr. Brehm indicated it is very aggressively priced. Ms. Weisz added it is very competitively priced, at the lower end of our open season bids.

Director Haroff asked is that causing any concern? Mr. Dusel indicated he does not believe there are any concerns over the pricing. There is a close tie between the cost of the inputs and the cost of the result in energy. This is true for the solar industry in particular, with supply ramping up, manufacturing will bring the cost down. It is a situation where economic variables have finally synchronized and favorable economics have materialized so that as that supply curve has shifted you will see these lower prices, basically driving the market to where it needs to be to attract business at scale.

Director Sears mentioned that one of the attractions of this project is that we can reduce our reliance on RECs. Is there a plan to sustain the lowered reliance on RECs? Mr. Brehm indicated that are additional opportunities that may meet this need falling on the tail of this deal.

Ms. Weisz clarified that RECs are a part of renewable energy bundled transactions as well.

Director Bragman asked who manufactures the actual wind turbines? Are they domestic or coming through the parent company in Portugal? Per Mr. Brehm they from a French company but are assembled in the US.

Mr. Brehm also added that we are taking a much bigger portion than what we had planned for our bucket 1 transactions. The plan is to bank those RECs from the early years on this transaction and carry those forward to apply at the time there is a need for MCE. This will take us to our 33% RPS goal by the end of 2015. This transaction actually at 39% RPS compliance so we will bank the excess and carry that forward; doing so allows us to maintain 33% RPS all the way through 2020 and any new transactions from this project should be able to maintain that record beyond.

Ms. Weisz added the Ad Hoc Contracts committee discussed this item and the price as well.

M/Bailey/Lion (11-0-0 passed) authorize approval of the Power Purchase and Sale Agreement with EDP Renewables North America LLC for Renewable Energy Supply. Directors Connolly and Withy were absent.

Agenda Item #8 – MCE Office Space Proposal (Discussion/Action)

Emily Goodwin, Director of Internal Operations presented this item.

Ms. Goodwin had updated materials distributed and will provide other updates since the Board packet was distributed last week. She introduced MCE's Real Estate agents, Mark Carrington and Kevin Delahanty who have been helping us through the lease process with the 700 Fifth Ave. property. Mark is the local on-site agent and Kevin is from San Francisco both representing Newmark, Cornish & Carey.

Ms. Goodwin shared that MCE has made significant progress in the lease negotiations since the July Board meeting when she last presented this item. She began by thanking the Board members who have taken an active role in pushing this transaction along, providing guidance to MCE staff in a number of ways:

- Guidance on best practices – looking out for lease negotiation language, construction pitfalls, unmet deadline language, etc.
- Site visits – multiple visits to the property
- Construction build out protection
- Contractor/Architect referrals – not necessarily for the impending tenant improvements on the property but to act as representation for MCE to make sure the architect and contractor representing the landlord are reasonable

Special acknowledgement and thanks went out to Directors Connolly, Sears, Athas, McCaskill and Bailey for all of their work.

Ms. Goodwin discussed some of the key developments on this project. She shared that MCE has (1) fostered relationships with a local contractor and architect, (2) established good working relationship with the building owner, (3) established early March 2015 occupancy date, (4) negotiated language for build out delay damages, and (5) established early occupancy exceptions with the San Rafael Fire Department, Marin Municipal Water District and the San Rafael Planning Department. We were able to establish familiarity with our Board plans, the timing related to our required relocation here at SRCC or our move

out of the building, and some of the timing issues around the improvements needed at 700 Fifth Ave. space. All the key departments (and leadership met with) listed above are very sensitive and supportive to our cause and understand the timing issues that are tight with tenant improvements. These relationships recently fostered have been helpful to us by working outside the box to establish some important and necessary exceptions to existing requirements in order to meet timing deadlines on finalized work plans.

Ms. Goodwin discussed the Updated Cost Comparison Analysis and wanted to point out a couple of differences. The key difference is 750 Lindaro St. is the relocation site on the analysis and the base rent amount was changed to reflect an occupancy date in 2015. She further discussed some of the cost factors (base rent) and differences in space at the 750 Lindaro St. property versus the cost factor (base rent) and space at the 700 Fifth Ave. property. The rent at 750 Lindaro St. was initially offered as an extension opportunity to 2023 but that is no longer available (it would terminate on December 31, 2019). The lease term is now to 2019 at 750 Lindaro St. which made the option of staying on the campus less enticing for MCE. Important to note is that the 700 Fifth Ave. property rent requirement has allowed MCE to ramp up to paying for the full cost of the total building. We would not initially pay for the full price of the building of 10,000+ square feet but start with the 6,000 sq. ft. and incrementally increase until we have total occupancy of the building (within 3 years). That allows us time to settle in, find the right sub-leasing tenant and move forward comfortably with that large space.

Ms. Goodwin entertained questions prior to moving forward with the 700 Fifth Ave. renderings.

Dawn Weisz, Executive Officer stated she believes this packet of information is very useful and a great summary of key points. A lot of this information has been developed with the help of the Board and she thanked them for participating in the process.

Director Sears asked for clarification of the ramping up of the square footage at the 700 Fifth Ave. property in terms of the rent payment. Since we are assuming the tenant improvements will be completed by March 2015, the ramp up does not provide an opportunity for ongoing physical improvements during that period of time. Is that going to be completed prior to moving in? Ms. Goodwin indicated that assumption is correct: tenant improvements will be complete by move in date.

Ms. Goodwin discussed several other key components: (1) seismic retrofitting has been done on the 700 Fifth Ave. property, (2) language around damages should construction or permitting and force majeure cause delays in our move in date; we were able to negotiate any construction-related damages would be solely absorbed by the owner at \$775 per calendar day; any permitting or force majeure delays each would be split 50/50 between MCE and the building owner.

She reiterated that early occupancy date of March 2015 has been established so any key issue such as incomplete installation of elevators and fire sprinkler systems will not delay occupancy past March move-in. Of course this is not the preferred plan but instead allows a backup plan that we were able to negotiate with the San Rafael Planning and Fire Departments. In terms of construction associated damages, they would be totally absorbed by the owner. Any time after March 9, 2015 MCE would accrue and be paid delayed vacancy penalties by the owner, and MCE would split delayed vacancy penalties 50/50 with the owner if caused by permitting or force majeure.

Director Lion noted on the first floor of the 700 Fifth Ave. property there is a conference room noted and he asked how many people would that room accommodate? Ms. Goodwin indicated the room will allow

for more than regular committee meetings as well as Board meetings. We would also be able to rent the space to small community organizations, environmental or energy groups at a reasonable rate.

Ms. Goodwin pointed out other attractive features of the space are ample meeting room space, long term lease (10 years), substantial renovations and upgrades covered at base price, ability to sublet, opportunity to create incubator space for local organizations, and opportunity for an energy efficiency library and demonstration room.

Realtor Mark Carrington shared that the San Rafael downtown market has tightened considerably in the past two years and property options are somewhat limited. He considers the 700 Fifth Ave. property a good deal for MCE.

Director Athas thanked Emily, Dawn, Darlene and other staff for their efforts and the excellent job they've done and continue to do. She asked that Emily expand on the higher escalator on the rent and the fact that utilities are not included in the 700 Fifth Ave. building which is adding approximately \$30,000 by year 6 to the lease. What are our projections on how we are going to meet those additional costs? Do we have a 5-6 year plan that shows how we plan on meeting the added financial obligation and are we comfortable in knowing that we can meet the obligation or real plans on making sure some of those expenses are absorbed with a sub-tenant?

Per Ms. Goodwin she would say both. She explained that we vetted this with our accountants and see opportunity to take control of the extra costs most especially the utilities for some of the costs as an advantage for us for reasons of having incentives, the means to finance projects, reduce our energy use by putting solar on the roof and implementing energy efficiency measures. We also plan to offset the cost by subletting spaces. We need extra space so no matter where MCE goes we will incur additional costs. We are already at capacity and relocating to 750 Lindero St. would not resolve that issue especially if we added another staff person, we would still be work-space deficient.

Ms. Weisz spoke to the plan indicating the fact that we have taken on responsibility of utilities, really is related to our core business. We were interested in taking that on partly because we would like to take the opportunity to potentially incrementally roll out some energy efficiency upgrades to the building. We would also like to eventually install solar, benefit from that financially and reduce energy bills over time so we wanted to have control of that line item. That is a line item we pay here but we do not control it as it is socialized among tenants so any changes we make within the office has no impact on our overall costs.

As far as long term trajectory she believes the main thing that we would love to be able to demonstrate at that building, to the extent that is possible, is energy efficiency. This would be an exciting opportunity to have. Long term she thinks this space is going to suit us well and accommodate the incremental growth we have over time. Having the ability to acquire some space that we are subletting is a great opportunity for us and will allow us to keep our costs under control and not have to deal with the uncertainty of a move 4 years down the road.

Director McCaskill asked Ms. Goodwin to speak to who bears the financial risk if the landlord due to construction delays does not allow us to move in by the final move in date. Ms. Weisz referred the Board to the spreadsheet that was prepared by Ms. Goodwin that spells out the build-out delay penalties that gives a summary. This item was very important to our Executive Committee and as a result we spent a lot of time working with the landlord to come up with an approach that seemed fair to both parties. The landlord was concerned that he wouldn't have control over some things. We delineated the types of risks

we were looking at and came up with two categories: (1) construction-related delays. If there were construction delays past the agreed upon occupancy date of March 9th, then the risk is fully absorbed by the landlord and the landlord would be responsible for paying our penalty to stay in this facility and, (2) permit-related delays. If there is a permit delay then MCE and the landlord would share those costs, split 50/50. They would cover half of the impact of MCE's move and we would cover the other half. We have already been engaged in an expedited permit process. A provision has been added to the lease Addendum that requires that we will be provided with all dialogue with the respective offices which gives MCE full visibility to project management and gives us the ability to determine if there have been legitimate permit delays. For force majeure MCE would split the impact there as well 50/50 with the landlord.

She added that MCE has done quite a bit of work with the construction company and the architect that will be used to flesh out a timeline for when we expect the permits to be received and how long the project will take. The March 9th deadline is one that the other party was very comfortable with and the other party is not interested in paying any of these damages and is very eager to get the project wrapped up so that we are in the building paying rent as soon as possible. We believe there are good incentives in place to make that happen and believe based on that reality check we've been doing with the permitting agencies that target date is achievable. We do not anticipate this will need to be used but we are glad that it is here just in case.

Ms. Goodwin talked briefly about the renderings shown of the renovated space explaining how removal of the solid walls of the staircase will tremendously open up lighting in the building and some of the other improvements such as sky lighting inside the building, raising of ceiling and MCE signage on the outside of the building.

Director Bailey asked Ms. Weisz to explain or provide an example of what is meant by permit delay. Ms. Weisz explained the information has been provided to from the permit agency and if their timeline is not adhered to and that causes the project to fall substantially behind schedule, such would constitute a permit delay. On the other hand, if there was a permit applied for on a certain component of the work but in order to get that permit finalized there was a request for more information from the contractor, but the contractor did not follow up quickly with that information, that would not be a permit delay but negligence on the part of the contractor. This example articulates why we will require evidence of any permit delays and have visibility to project management conversations and milestones so that we're made aware in real time .

Director Bailey asked if a permit delay is described in the agreement. Ms. Weisz indicated there is not a definition included in the agreement but there will be a new provision added regarding the requirement that the landlord keep the lessor informed of each step of the process in order for the lessor to determine if there has been a permit delay on our part.

Director Bailey indicated it is difficult and almost impossible to realistically separate construction issues from permit issues and it might be reasonable to accept that there are some things we may not be made whole from. In his experience as a construction attorney it is hard to separate whose responsibility it is when something is late.

Director Sears indicated it is often difficult to distinguish a permit delay from a failure to timely provide information. The goal is to make the contractor responsible for timely provision of information. There is

some tightening up and fine tuning of language that needs to take place to reflect this important detail in the lease addendum and work letter agreement.

After additional comments and suggestions by the Board it was determined and agreed that strong project management is the key and Director Bailey was asked to put eyes on the revised language to protect MCE.

Ms. Weisz and Ms. Goodwin addressed additional questions from the Board.

M/Bailey/Athas (11-0-0 passed) authorize finalization and execution of the Lease Agreement and Addendum to Lease Agreement for 700 Fifth Avenue in San Rafael subject to condition of modification of the definition the damages that impact delay or consequential damages. Directors Connolly and Withy were absent.

Agenda Item #9 – DRAFT Policy 011-MCE Sustainable Workforce Policy (Discussion)

Dawn Weisz, Executive Officer presented this item.

Ms. Weisz first thanked Director Bragman who brought this item to us a couple of months ago and we've had several discussions about this item at the Committee level. We've been able to pull together a draft sustainable workforce policy based on good input from Board members. This policy really supports four key areas: (1) Local businesses and the local workforce; (2) Union labor from multiple trades; (3) Apprenticeship programs; and (4) Green and sustainable businesses.

These are four components that all align with MCE's mission statement and the policy mindset of our Board. One other activity that has been happening at the staff level to develop this policy is a bit of due diligence to look at what other agencies are doing that have similar alignments with MCE, similar mission statements and goals.

Ms. Weisz and Legal Director, Beth Kelly met with SMUD early in August and talked about this policy. SMUD has had a lot of experience developing renewable projects, they are a local government agency and are highly regarded as trying to do the right thing with the environment and the community. Ms. Weisz and Ms. Kelly received some good input during their meeting with SMUD who suggested to make sure not to forget the local business workforce element. Ms. Weisz and other staff also met with union representatives and local businesses while developing this policy. Keeping that line of communication open when developing this policy was very important. Richmond has a model policy that articulates most of these important concepts quite well and that was used in a reference point when developing this policy.

The apprenticeship program is an element that came to us from discussions with Bill Scott and some involvement that we've had with the Workforce Investment Board. Over the last couple of years our Energy Efficiency team has been involved in meetings with the Workforce Investment Board and the Marin Economic Commission. They've been interested in seeing apprenticeship programs get started in our area.

Businesses that promote sustainability or are certified as a Green Business are also aligned with MCE mission and our goals. MCE is a certified green business and using the Marin County Green Business

Program and we want to support other green businesses that are making choices that are good for the environment.

Ms. Weisz shared that those are the elements we've tried to incorporate into this draft and the areas where it would touch our agency are the Power Purchase Agreements with Third Parties; MCE-Owned Generation Projects (projects we plan to build on at the Richmond Port and Chevron); the Feed-In-Tariff Projects which is another area where we have a bit of impact on what happens there; Energy Efficiency Projects, that's a programmatic component we would like to apply this policy to as well; and Services and Supplies. We buy supplies from a lot of folks and some of them are local and we gravitate towards the ones who have sustainable practices. Those are some of the highlights of the proposed policy.

Ms. Weisz deferred to Legal Director, Beth Kelley for additional comments.

Ms. Kelly indicated that Ms. Weisz basically captured the essence of their meeting with SMUD. It was a very interesting opportunity to understand better how to incorporate so many different interests into the policy. What they found was that many small local businesses don't necessarily use prevailing wage in union labor but that it is important to allow room to encourage both. She thinks it is an exciting policy because it is so comprehensive and further strengthens the mission of MCE.

Director Sears asked about reference to "fairly compensated opportunities for local graduates." Who are these "graduates" or should we say "local residents"? Ms. Weisz clarified these are graduates of the apprenticeship program and suggested cleaning up the language on graduates to make it a bit more broad. We want to provide opportunities for people in our communities as well as those who have gone through the apprenticeship program

Director Lion asked about direct hires other than those under MCE-owned generated projects that would be covered under this policy. Per Ms. Weisz this policy would apply to our internal team, vendors and those engaged through our Power Purchase Agreements to a degree but that language should be articulated and spelled out in the policy.

Alternate Director McLaughlin mentioned the policy started out stating we should be broader in the apprenticeship programs. It might be useful to include language that says we will support and use pre-apprentice as well as apprentice programs. If there could be a guideline to use pre-apprentice program people as well as apprenticeship program that would be ideal.

Director Bragman stated he is happy with the policy and thanked Ms. Weisz and Ms. Kelly for meeting with SMUD as that gives the Board a bit more confidence based on the quality of due diligence. He thinks Mayor McLaughlin's comment demonstrates this is a living document and as conditions change the document should reflect those changes. He stated this closes the loop on MCE's mission statement and this is something that all should be proud of.

Ms. Kelly clarified changes to policy as: revise language on "fair compensation" to include local residents, modify language to include pre-apprenticeship program as well as apprenticeship program participants and include standards for direct hire employees.

M/Bragman/Greene (11-0-0 passed) approve Policy 011 – MCE Sustainable Workforce Policy. Directors Connolly and Withy were absent.

Agenda Item #10 – Resolution 2014-05 Adopting Amendment 8 to Marin Clean Energy Joint Powers Agreement to Account for the County of Napa and the City of San Pablo (Discussion/Action)

Dawn Weisz, Executive Officer presented this item.

Ms. Weisz discussed this administrative action which is needed as a direct result of the membership action. MCE has already gone through the process of approving the County of Napa and the City of San Pablo as members but the last action is to make the amendment to the JPA Agreement which adds the signature page for the County of Napa and the City of San Pablo. It also changes a couple of the exhibits, the list of parties is modified to add those two communities and then the voting shares document that shows the amount of usage in each community and the weighted vote.

It is worth noting that the way our JPA Agreement is currently structured means we base that weighted vote calculation on overall usage in the community and not the MCE customer usage.

We are looking forward to having Napa represented at our Board Retreat on September 18, 2014.

M/Lion/Bragman (11-0-0 passed) approve Resolution 2014-05 of the Board of Directors of MCE Adopting Amendment 8 to the MCE Joint Powers Agreement subject to the final reading of the San Pablo CCA ordinance. Directors Connolly and Withy were absent.

Agenda Item #11 Request from the City of El Cerrito for Membership Analysis and Consideration as a Member of MCE (Discussion/Action)

Dawn Weisz, Executive Officer presented this item.

Ms. Weisz provided information and history on the City of El Cerrito and she referred the Board to page two of the report which shows a map of El Cerrito.

The City of El Cerrito has many goals that align with the MCE goals and the City of Richmond goals as far as sustainability initiatives and interest in greenhouse gas emissions. In 2006 they passed resolutions to endorse the Mayor's Climate Protection Agreement and GHG targets and the Global Warming Solutions Act.

The City of El Cerrito has submitted a request for membership to your Board and Ms. Weisz explained the process of membership. There are some benefits to taking on membership studies in a consolidated fashion because it provides us with the ability to bundle our procurement and enrollment efforts with multiple communities at one time. That is one reason during the staff analysis and consideration of the request it was determined it would make sense to recommend conducting a membership study for the City of El Cerrito.

We will talk more about it at the Retreat but we may be at a point where we go into a holding pattern for any future communities and focus on the ones that have come on in 2014.

Ms. Weisz briefly discussed things that are considered when deciding on incorporating new communities and what is factored into that decision.

Ms. Weisz described the next step in the process would be to undertake the membership analysis which takes a quantitative look at the usage data from the community. We look at the actual customer classes and plug that in to our existing model for rates, revenue generation and costs. That is how we determine whether the addition of the community will have a negative or positive impact on our existing rate structure and the agency as a whole.

We also look at opportunities that might be present in the community for additional energy efficiency activity and also opportunities for renewable energy generation projects.

If the Board is interested in pursuing the study, the results would be presented to the full Board.

M/Athas/Bailey (11-0-0 passed) approved the membership request of the City of El Cerrito. Directors Connolly and Withy were absent.

Agenda Item #12 – Communications Update (Discussion)

Alex DiGiorgio, Community Relations Coordinator presented this item.

Mr. DiGiorgio discussed the various meetings and events that the Public Affairs team have been and continue to be engaged in.

- Marin Coalition Luncheon Speaker Event - chaired by Damon Connolly
- Deep Green Solar Schools Campaign
 - Novato High School, Terra Linda High School, and Tomales High School
 - Competing to get the most Deep Green enrollments
 - Winner will receive a 3 kW solar system, installed by OneEnergy
 - Campaign ends on 9/28/14

Director McLaughlin asked if at the end of the campaign, we could start another one. Mr. DiGiorgio indicated there is a possibility but per Ms. Weisz it currently is a one-time campaign.

Mr. DiGiorgio discussed the Deep Green Champion Certificates

- From Marin Clean Energy
- From Municipal Councils and Supervisors

Mr. DiGiorgio and Ms. Weisz responded to questions from the Board.

Agenda Item #13 - Legislative Policy (Discussion)

Beth Kelly, Legal Director presented this item.

Ms. Kelly presented the MCE Draft Legislative Policy Guidelines and reminded the Board that most of their cities and towns have these similar policies in place for staff and lobbyists as a user friendly guide on when and how to take legislation action.

The policy is broken into three areas which are driven specifically by our mission statement. Those areas are: Support California Community Choice Aggregation, Reduce Greenhouse Gas Emissions, and Promote Local Economic and Workforce Benefits.

This policy was originally brought to the Executive Committee where feedback was received and the policy was revised accordingly. With those important edits made, the policy is being brought to your Board for final consideration.

Ms. Kelly responded to questions and comments from the Board.

Director Sears commented that she thought the policy is quite good.

Director Haroff asked Ms. Kelly what she had in mind regarding the statement under Reduce Greenhouse Gas Emissions "Monitor and consider supporting efforts that accelerate bringing renewables ..." Ms. Kelly explained this came up because of this year's solar permitting process in Marin and one or two areas where there may be land use conflicts between the interests of MCE and the interests of the member communities. It is important for MCE to have streamlined permitting for renewable energy resources so that we can bring those new resources into our portfolio and achieve our GHG emissions goals. Local Government planning departments have to address this issue as well and since there is a potential conflict on those types of land use permitting issues, when land use issues come up, we will carefully evaluate and make a thoughtful recommendation for consideration by your Board prior to taking action.

Director Haroff asked if the kind of streamlining Ms. Kelly intended is to increase the installation of new solar projects in our service territory. Ms. Kelly confirmed that is correct; this effort would be to support MCE's pursuit of streamlined permitting for renewable energy facilities for the benefit of developers and our community.

Director Sears suggested adding that language to the sentence in question. Ms. Kelly will modify language accordingly under Reduce Greenhouse Gas Emissions.

M/Haroff/McCaskill (11-0-0 passed) approve Legislative Policy Guidelines. Directors Connolly and Withy were absent.

Agenda Item #14 - Regulatory and Legislative Update (Discussion)

Beth Kelly, Legal Director presented both the Regulatory and Legislative updates.

Ms. Kelly provided an update on the legislative front since the passing of bills through the House is now over. As noted by Ms. Weisz, Assembly Member Bradford's anti-CCA bill, AB 2145 was not brought to the Senate floor and has died.

SB 1139 which is a CA Renewable Portfolio Standards (RPS) bill that would have required additional geothermal procurement for all load serving entities has also died. We believe it is positive that the bill died because we want to procure from multiple sources of renewable energy and not be bound by a particular singular source at any given time. MCE did not take a specific position on that bill.

AB 2188, the solar permitting streamlining bill, passed both houses and is going before the Governor. The Governor has to sign or veto by September 30th.

SB 1414 which is an electricity demand response bill has passed both houses. This is a bill that would encourage additional demand response programs. The Governor has to sign or veto this bill by September 30th.

Ms. Kelly shared that on the regulatory front there have been some positive developments based on MCE's efforts. The only item she will mention in detail is a new Rulemaking proceeding that has been opened up by the PUC. It is the distributed resources proceeding. This proceeding was triggered by AB 327 which was a significant rate reform bill that was approved 2013. One component of that bill requires the investor-owned utilities to use distribution resource plans in order to enable and facilitate distributed resources. Those are distributed generation, energy efficiency, electric vehicles, energy storage and demand response.

MCE will be very involved in that proceeding, particularly because: (1) we have already been active on this proceeding and we will concentrate more effort moving forward based on the broad range of implications on our core programs this processing will have, and (2) each distributed resource has a significant opportunity to provide GHG reduction in our communities. MCE wants to ensure that in this proceeding, which is currently a showcase proceeding at the commission, the distribution plans the utilities put forward to help enable these distributed resources are competitively controlled. We, as a CCA, would like to see all sorts of players be able to participate in these distributed resources, and avoid another situation where the IOUs try to take over the whole plan and manage the deliberation process. MCE will be participating to ensure that CCAs, other energy providers, local governments and third parties all have equal access to provide important stakeholder feedback and guidance during the proceeding regarding these new resources and how the industry plans to accommodate their seamless integration onto the grid.

Director Sears commented on the format of the packet and that it is easy to follow and it is appreciated.

There were no questions or comments from the Board or the public.

Agenda Item 15 - Board Matters (Discussion)

Ms. Weisz introduced and welcomed new Pacific Energy Advisors team member, Brian Goldstein who will be working with John Dalessi and Kirby Dusel. He has many years of experience in the energy sector.

Agenda Item #16 – Adjourn

9:26 PM

Damon Connolly, Chair

Attest:

Dawn Weisz, Secretary



October 2, 2014

TO: Marin Clean Energy Board
FROM: Greg Morse, Business Analyst
RE: Monthly FY 14 Budget Report (Agenda Item #04 - C.2)
ATTACHMENT: MCE Budget Reports 2014-08 (Unaudited)

Dear Board Members:

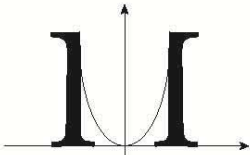
SUMMARY:

The attached budget update compares the FY 2015 budget to the unaudited revenue and expenses of MCE for the month ending August 2014.

Expenditures over the last month have been stable and have remained within budget. Electric sales matched predictions, but because of adjustments to the previous month's energy invoices, costs of energy were slightly below projections. This netted MCE a slightly higher than expected growth in available funds.

Overall, MCE 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 Plumblne

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Marin Clean Energy

We have compiled the accompanying budgetary comparison schedules of Marin Clean Energy (a California Joint Powers Authority) for the period ended August 31, 2014. 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.

Certain accounting functions provided by Maher Accountancy are considered management functions by the American Institute of Certified Public Accountants. Accordingly, we are not independent with respect to Marin Clean Energy.

Maher Accountancy

September 16, 2014

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**MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through August 31, 2014**

	<u>2013/14 YTD Actual</u>	<u>2014/15 YTD Budget</u>	<u>2014/15 YTD Actual</u>	<u>2014/15 YTD Budget Variance (Under) Over</u>	<u>2014/15 YTD Actual/Budget %</u>	<u>2014/15 Annual Budget</u>	<u>2014/15 Budget Remaining</u>
REVENUE AND OTHER SOURCES:							
Revenue - Electricity (net of allowance)	\$ 31,621,646	43,218,266	\$ 42,119,541	\$ (1,098,725.22)	97.46%	\$ 101,138,394	\$ 59,018,853
EXPENDITURES AND OTHER USES:							
CURRENT EXPENDITURES							
Cost of energy	28,045,796	34,254,211	33,647,850	(606,361)	98.23%	88,410,551	54,762,701
Staffing	530,975	788,125	789,925	1,800	100.23%	1,950,000	1,160,075
Technical consultants	229,573	239,298	213,175	(26,123)	89.08%	560,000	346,825
Legal counsel	55,045	155,868	125,895	(29,973)	80.77%	335,000	209,105
Communications consultants and related expenses	435,152	234,375	186,524	(47,851)	79.58%	750,000	563,476
Data manager	951,662	1,112,500	1,102,799	(9,701)	99.13%	2,670,000	1,567,201
Service fees- PG&E	204,605	279,167	286,213	7,046	102.52%	670,000	383,787
Other services	116,943	125,000	145,731	20,731	116.58%	300,000	154,269
General and administration	117,040	145,833	172,699	26,866	118.42%	350,000	177,301
Marin County green business program	15,000	15,000	-	(15,000)	0.00%	15,000	15,000
Solar rebates	-	-	-	-	0.00%	25,000	25,000
Total current expenditures	<u>30,701,791</u>	<u>37,349,377</u>	<u>36,670,811</u>	<u>(678,566)</u>	<u>98.18%</u>	<u>96,035,551</u>	<u>59,364,740</u>
CAPITAL OUTLAY	1,710	8,333	9,966	1,633	119.59%	20,000	10,034
DEBT SERVICE	542,664	497,917	449,521	(48,396)	90.28%	1,195,000	745,479
INTERFUND TRANSFER TO:							
Local Renewable Energy Development Fund	51,536	109,994	109,994	-	100.00%	109,994	-
Total expenditures	<u>31,297,701</u>	<u>37,965,621</u>	<u>37,240,292</u>	<u>\$ (725,329)</u>	<u>98.09%</u>	<u>97,360,545</u>	<u>\$ 60,120,253</u>
Net increase (decrease) in available fund balance	<u>\$ 323,945</u>	<u>\$ 5,252,645</u>	<u>\$ 4,879,249</u>	<u>\$ (373,396)</u>		<u>\$ 3,777,849</u>	<u>\$ (1,101,400)</u>

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through August 31, 2014**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 1,505,702	\$ 411,404	\$ 1,094,298	27.32%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>1,505,702</u>	<u>411,404</u>	<u>1,094,298</u>	<u>27.32%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

* Transfer of \$547,500 for security of On Bill Repayment program not recognized as expenditure.

**LOCAL DEVELOPMENT RENEWABLE ENERGY FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through August 31, 2014**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 109,994	\$ 109,994	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>109,994</u>	<u>16,421</u>	<u>93,573</u>	<u>14.93%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 93,573</u>		

**MARIN CLEAN ENERGY
SUPPLEMENTAL SCHEDULE
April 1, 2014 through August 31, 2014**

	Actual
Other services	
Recruiting	-
Audit	34,500
Accounting	50,750
IT Consulting	6,906
Human resources & payroll fees	2,574
Legislative consulting	37,500
Miscellaneous professional fees	13,501
	\$ 145,731
General and administration	
Cell phones	395
Bank service fee	-
Data and telephone service	14,809
Insurance	3,848
Office and meeting rentals	83,139
Office equipment lease	2,549
Dues and subscriptions	26,679
Conferences and professional education	1,794
Travel	4,849
Business meals	3,096
Interest and late fees	13,616
Miscellaneous administration	57
Office supplies and postage	17,868
	\$ 172,699



October 2, 2014

TO: Marin Clean Energy Board
FROM: Sarah Estes-Smith, Administrative Associate
RE: Report on Approved Contracts (Agenda Item #4 – C.3)

Dear Board Members:

SUMMARY:

On March 7, 2013 your Board adopted Resolution 2013-04 which authorized the Executive Officer to enter into and execute contracts for an amount not to exceed \$25,000 within a fiscal year consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations. The MCE Integrated Resource Plan (IRP) approved in November of 2012 further authorized the Executive Officer to enter into and execute medium term power purchase agreements for Energy, Capacity and RECs with terms greater than 12 months and less than or equal to 5 years.

The following chart summarizes contracts of this nature which have been entered into during the previous month:

Month	Purpose	Contractor	Maximum Contract Amount	Term of Contract
September	Video editing services for existing MCE micro-documentaries.	Micro-Documentaries, LLC	\$2,800	6 months
September	Branding services related to Deep Green and Sol Shares logos.	Moore Iacofano Goltsman, Inc.	\$10,000	6 months
September	Legal services pertaining to real estate lease negotiations.	Morris Polich & Purdy LLP	\$25,000	6 months
September	Photography services for advertising and marketing purposes.	Rory Earnshaw Photography	\$15,000	6 months

Recommendation: Information only. No action required.



October 2, 2014

TO: Marin Clean Energy Board
FROM: Kirby Dusel, Technical Consultant
RE: MCE Power Content Label and Attestation (Agenda Item #04-C.4)
ATTACHMENT: Customer Communication: 2013 Power Content Label

Dear Board Members:

SUMMARY:

California Public Utilities Code requires all retail sellers of electric energy, including Marin Clean Energy, to disclose “accurate, reliable, and simple-to-understand information on the sources of energy” that are delivered to their respective customers.¹ Applicable regulations direct retail sellers to provide such communications no later than October 1st. The format for requisite communications is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. This format has been termed the “Power Content Label” by the California Energy Commission (CEC).

Information presented in the Power Content Label includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. In the event that a retail seller meets a certain percentage of its supply obligation from unspecified resources, the report must identify such purchases as “unspecified sources of power.” As your Board is aware, our supply agreement with Shell Energy North America allows for the use of such unspecified purchases to satisfy a portion of MCE’s energy requirements – these purchases have been appropriately identified as “unspecified sources of power” in the Power Content Label.

During the 2013 calendar year, MCE successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, small hydroelectric, biomass and biogas – for Light Green customers, the percentage of supply attributable to renewable energy sources approximated 51 percent; for Deep Green customers, renewable energy comprised 100 percent of the supply portfolio. A copy of MCE’s 2013 Power Content Label is presented below:

¹ California Public Utilities Code Section 398.1(b)

POWER CONTENT LABEL			
ENERGY RESOURCES	2013 LIGHT GREEN POWER MIX (Actual)	2013 DEEP GREEN POWER MIX (Actual)	2013 CALIFORNIA POWER MIX** (Actual)
Eligible Renewable	51%	100%	19%
-- Biomass & waste	6%	0%	3%
-- Geothermal	0%	0%	4%
-- Small hydroelectric	12%	0%	1%
-- Solar	<1%	0%	2%
-- Wind	33%	100%	9%
Coal	0%	0%	8%
Large Hydroelectric	10%	0%	8%
Natural Gas	0%	0%	44%
Nuclear	0%	0%	9%
Other	0%	0%	0%
Unspecified sources of power*	39%	0%	12%
TOTAL	100%	100%	100%
<p>* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.</p> <p>** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.</p> <p>For specific information about this electricity product, contact Marin Clean Energy at 1-888-632-3674. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.</p>			

Consistent with applicable regulations, MCE was successful in completing requisite customer communications in accordance with the October 1st deadline. Customers receiving Power Content Label communications will include those enrolled in the MCE program as of December 31, 2013 – the distribution list was derived based on prior discussions with designated CEC staff. The entirety of the communication provided to the aforementioned group of MCE customers is attached for your review.

While developing MCE's 2013 Power Content Label, staff performed a detailed review of all power purchases completed for the 2013 calendar year. This review included an inventory of all renewable energy transfers within MCE's Western Renewable Energy Generation Information System (WREGIS) accounts as well as a requisite independent audit for MCE's voluntary Deep Green, 100% renewable energy program.² Based on staff's review of available transaction records and findings of the independent auditor

² MCE's Deep Green retail service option is a Green-e Energy certified product, conforming to guidelines established by the Center for Resource Solutions, the Green-e Energy program administrator. As part of this certification, MCE must successfully complete an annual independent audit of power sources, ensuring the delivery of qualifying renewable energy to participating Deep Green customers.

(related to the Deep Green program), the information presented in the Power Content Label is accurate. It is also noteworthy that the supply percentages reflected in the 2013 Power Content Label are equivalent to statistics presented in the joint mailer (which included comparative information related to MCE and PG&E power supply, rates and greenhouse gas emissions) that was distributed to MCE and PG&E customers earlier this year.

To fulfill its Power Content Label reporting obligation, MCE must also provide the CEC with your Board's attestation regarding the accuracy of information included in the Power Content Label. As previously noted, staff has performed a detailed transaction review and has verified the accuracy of reported percentages for each resource type, as reflected in the Power Content Label. With this in mind, staff requests that your Board accept this determination and attest to the accuracy of the information included in MCE's 2013 Power Content Label. Should your Board endorse staff's recommendation, a copy of this staff report and related meeting minutes will be forwarded to the CEC, thereby completing MCE's Power Content Label reporting obligation for the 2013 calendar year.

Recommendation: Endorse the accuracy of information presented in MCE's 2013 Power Content Label based on staff's review.



Lower costs.

Local, clean power.

Smart, energy saving programs.

All brought to you by your community
based, not-for-profit electricity provider.

781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

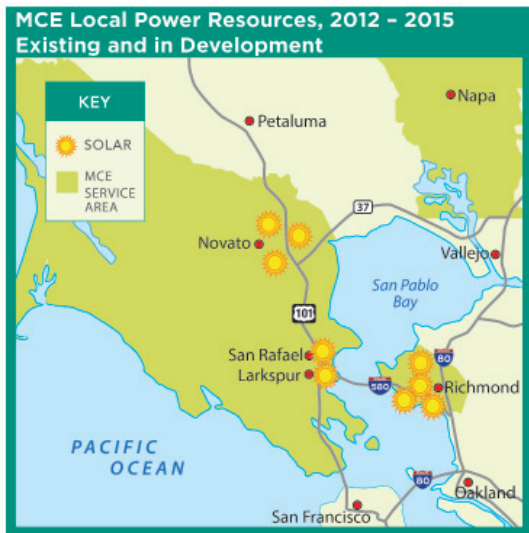


Support your local solar farm!

Construction is about to start on what will soon become the largest solar farm in Marin and Richmond on 11.5 acres at Novato's Cooley Quarry. This brand new solar power will begin supplying MCE **Sol Shares** customers next year!

Sol Shares, an alternative choice to MCE's Light Green and Deep Green service options, is limited to approximately 200 participants. Join the founding group of lucky homes and businesses taking advantage of this unique opportunity. Contact us today!

1 (888) 632-3674 | info@mceCleanEnergy.org



Lots of **local** renewable energy projects are being built for MCE customers.

Local power means local and union jobs!

MCE's local renewable energy installations will provide electricity to power up to **6,421 homes** per year!

POWER CONTENT LABEL

ENERGY RESOURCES	MCE 2013 LIGHT GREEN POWER MIX	MCE 2013 DEEP GREEN POWER MIX	2013 CA POWER MIX** (for comparison)
Eligible Renewable:	51%	100%	19%
- Biomass & waste	6%	0%	3%
- Geothermal	0%	0%	4%
- Eligible hydroelectric	12%	0%	1%
- Solar	<1%	0%	2%
- Wind	33%	100%	9%
Coal	0%	0%	8%
Large Hydroelectric	10%	0%	8%
Natural Gas	0%	0%	44%
Nuclear	0%	0%	9%
Other	0%	0%	0%
Unspecified sources of power*	39%	0%	12%
TOTAL	100%	100%	100%
<p>* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources at the time of purchase.</p> <p>** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.</p>			
<p>For specific information about these electricity products, contact MCE at 1 (888) 632-3674 or info@mceCleanEnergy.org. For general information about the Power Content Label, contact the California Energy Commission at 1 (800) 555-7794 or www.energy.ca.gov/consumer.</p>			



October 2, 2014

TO: Marin Clean Energy Board of Directors
FROM: Emily Goodwin, Director of Internal Operations
RE: Records Retention Compliance (Agenda Item #04 -C.5)
ATTACHMENT: MCE Records Retention Policy 003

Dear Board of Directors:

SUMMARY:

On July 7, 2011, your Board adopted Policy No. 003, Records Retention. Pursuant to Policy 003, MCE staff recommended various documents be discarded following the December 5, 2013 Board meeting. Based on suggestions from the Board about the timeframes for certain document types, your Board recommended MCE staff instead revisit and revise Policy 003 at the next Executive Committee meeting. Those revisions were included in a new version of the Policy 003, adopted by the Board May 1, 2014.

Pursuant to Policy No. 003, records will be retained according to schedules set forth therein, after which time all documents or electronic files will be deleted or discarded. Pursuant to Policy No. 003, the following files will be deleted or discarded:

1. **Executed Contracts** (retained until 10 years after termination date of the contract)
 - N/A
2. **Invoices from Vendors** (retained until 2 years after completion of contract)
 - 211
3. **Non-Disclosure Agreements** (retained in perpetuity)
 - N/A

4. **Board Approved Decisions** (retained in perpetuity)
 - N/A
5. **Board and Committee Meeting Materials** (retained in perpetuity)
 - N/A
6. **Board Approved Budgets** (retained in perpetuity)
 - N/A
7. **Drafts of Documents** (retained until 30 days after final version is approved)
 - N/A
8. **General Electronic Correspondence** (retained for 2 years)
 - 8,712
9. **Customer-Specific Usage Information and Data** (retained for 5 years)
 - N/A
10. **Marketing Material** (retained for 2 years after public distribution)
 - 8
11. **General Educational or Informational Material** (retained for 2 years)
 - 357
12. **Personnel Information** (retained for 10 years after employee end date)
 - N/A
13. **Accounting Records** (retained for 7 years)

Recommendation: Approve the proposed expired items for deletion in accordance with Policy 003.



POLICY NO. 003 – RECORDS RETENTION

Records will be retained according to the following schedule. After the required retention date has passed all documents or electronic files will be deleted or discarded.

Record Type	Required Retention	Sample Descriptions
Executed Contracts	10 years after termination date of the contract	Power supply contracts, contracts with vendors or consultants
Invoices from Vendors	2 years after completion of contract	Vendor invoices for payment
Non-Disclosure Agreements	In perpetuity	NDA with vendor, employee, Board member or advisor
Board Approved Decisions	In perpetuity	Resolutions, meeting minutes, and other items approved at regular or special Board meetings
Board and Committee Meeting Materials	In perpetuity	Agendas, staff reports and other material provided to Board members in preparation for meetings
Board Approved Budgets	In perpetuity	Final, approved budgets
Drafts of Documents	30 days after final version is approved	Draft contracts, programs, RFPs, etc.
General Electronic Correspondence	2 years	Relevant email correspondence at staff discretion
Customer-Specific Usage Information and Data	5 years	Electronic information and reporting from Data Manager, bill analyses
Marketing Material	2 years after public distribution	Flyers, brochures, electronic advertisements
General Educational or Informational Material	2 years	Brochures, reports, electronic information
Personnel Information	10 years after employee end date	Offer letter, resume, evaluations
Accounting Records	7 years	Unaudited financials, bank statements, payables/receivables and controls back up documentation, etc.



October 2, 2014

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: First Addendum to Second Agreement with Troutman Sanders LLP (Agenda Item #04 – C.6)

ATTACHMENTS: A. Second Agreement with Troutman Sanders LLP
B. First Addendum to Second Agreement with Troutman Sanders LLP

Dear Board Members:

SUMMARY:

On March 6, 2014, Marin Clean Energy and Troutman Sanders entered into the Second Agreement between the parties for legal and regulatory services. The Agreement stated that the maximum cost to MCE would not exceed \$50,000.

The attached First Addendum amends the agreement with Troutman Sanders such that the contract amount is increased by \$25,000 for a total amount not to exceed \$75,000.

Recommendation: Approve execution of the First Addendum to the Second Agreement with Troutman Sanders LLP.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND TROUTMAN SANDERS LLP**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day **March 6, 2014** by and between the **MARIN CLEAN ENERGY**, hereinafter referred to as "MCE" and **Troutman Sanders LLP**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: **To provide legal services to MCE related to new and existing power purchase agreements as requested by MCE staff.**

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor shall invoice MCE within 90 days of any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable.

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$50,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2014**, and shall terminate on **March 31, 2015**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming the Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to the MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under Section 16 of this Agreement to indemnify, defend and hold the MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. The MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 AUTO LIABILITY

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 WORKERS' COMPENSATION

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

6.4 PROFESSIONAL LIABILITY INSURANCE

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, the MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and the MCE may conclusively rely thereon.

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of the MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the MCE evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the MCE.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of the MCE upon payment to Contractor for such work. The MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to

Contractor or to any other party. Contractor shall, at the MCE's expense, provide such reports, plans, studies, documents and writings to the MCE or any party the MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for the MCE.

12. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, the MCE may terminate this Agreement by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

13. AMENDMENT:

This Agreement may be amended or modified only by written agreement of all parties.

14. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

16. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE 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 the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from the MCE's contact person referenced in paragraph 19. NOTICES below.

19. NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Agreement Manager and all notices shall be given to MCE at the following location:

Contract Manager: Sarah Ritter, Administrative Associate

MCE Address: 781 Lincoln Ave., Suite 320

San Rafael, CA 94901

Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor: Troutman Sanders LLP
 ATTN: Stephen Hall

Address: 805 SW Broadway
 Suite #1560

Portland, OR 97205

Telephone No.: (503) 290-2336

20. ACKNOWLEDGEMENT OF EXHIBITS

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY

Marin Clean Energy:

By: [Signature]
Executive Officer

By: [Signature]
Chairman

CONTRACTOR:

By: [Signature]
Name: Stephen Hall

MCE COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified
- Optional Review by MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide legal services to MCE related to new and existing power purchase agreements as requested by MCE staff. Services may also include transaction support in drafting, negotiations, finalization, and appropriate implementation of power supply transactions.

EXHIBIT B
FEES AND PAYMENT SCHEDULE (required)

Hourly fees for professional services under this agreement will be billed monthly for all services rendered. Hours will be billed as follows:

Stephen Hall at \$675 per hour
Brian Harms at \$575 per hour
John Leonti at \$675 per hour

All rates are subject to a 10 percent discount.

Contractor services will be task-specific with MCE providing direction on tasks to be undertaken in writing by letter, voice communication or email. The amount of any fees and costs billed under this agreement shall not exceed \$50,000.

**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND TROUTMAN SANDERS LLP**

This FIRST ADDENDUM is made and entered into on October 2, 2014, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and TROUTMAN SANDERS LLP (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide regulatory services as directed by MCE staff dated March 6, 2014 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$50,000 for the legal services described within the scope therein; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$25,000 for a total not to exceed \$75,000;

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

AGREEMENT

1. Section 4 is hereby amended to read as follows:

MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$75,000**.

2. The second sentence of the second paragraph of Exhibit B is hereby amended to read as follows:

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$75,000 for the term of the agreement.

3. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.

**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND TROUTMAN SANDERS LLP**

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

CONTRACTOR:

By: _____

MARIN CLEAN ENERGY:

By: _____

By: _____



October 2, 2014

TO: Marin Clean Energy Board

FROM: Emily Goodwin, Director of Internal Operations

RE: Third Amendment to Lease with San Rafael Corporate Center
(Agenda Item #05)

ATTACHMENT: Third Amendment to Lease with San Rafael Corporate Center

Dear Board Members:

SUMMARY:

Following your Board's approval of the lease agreement at 700 Fifth Avenue in San Rafael on September 4, 2014, MCE is now in a position to terminate the current lease agreement at the San Rafael Corporate Center (SRCC). This agreement is held between MCE and SRCC through December 31, 2019.

Based on the recent buy out of the SRCC by California Corporate Center Acquisition LLC, and conditions set forth to motivate early termination of lease options for existing tenants, MCE staff has negotiated an incentive package to terminate the current lease agreement through the attached Third Amendment to Lease with SRCC. The agreement for terminating MCE's existing lease at the SRCC and vacating the building on or prior to February 28, 2015 allows that:

1. All remaining lease costs are waived as of September 11, 2014, the date of full execution of the new lease agreement at 700 Fifth Avenue. This equates to a monthly savings of \$16,605.95 for the remainder of 2014 and \$16,754.66 for January and February of 2015.
2. A payment will be made from the landlord to MCE in the amount of \$400,000 upon successful evacuation of the existing office space by February 28, 2015. These funds will be used to cover moving and other office-related expenses.

Recommendation: Approve the Third Amendment to Lease with San Rafael Corporate Center.

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE (this “**Third Amendment**”) is made as of October __, 2014 (the “Third Amendment Effective Date”), by and between CALIFORNIA CORPORATE CENTER ACQUISITION, LLC, a Delaware limited liability company (“**Landlord**”), and MARIN CLEAN ENERGY (formerly MARIN ENERGY AUTHORITY), a California joint powers authority (“**Tenant**”).

RECITALS:

A. SR Corporate Center Phase One, LLC (“**Original Landlord**”), as landlord, and Tenant, as tenant, entered into that certain Office Lease Agreement dated as of July 10, 2010, as amended (the “**Lease**”), providing for rental use by Tenant of 2,188 rentable square feet of office space at 781 Lincoln Avenue, San Rafael, California, designated as Suite Number 320 (referred to as the “Premises”).

A. The Lease was amended by that First Amendment dated December 1, 2011, which among other things, expanded the Premises by an additional 1,124 rentable square feet of contiguous space (the “Suite 320 Expansion Space”), for a new total of 3,312 rentable square feet.

B. The Lease was further amended by the Second Amendment dated December 4, 2012, which among other things: expanded the Premises by an additional 1,645 rentable square feet into Suite 300, for a new total of 4,957 rentable square feet; adjusted the Base Rent and Tenant’s Proportionate Share; and added an Option to Renew.

C. Landlord is the successor-in-interest to Original Landlord and is the owner of the interest of the “Landlord” under the Lease.

D. The Term of the Lease is scheduled to expire on December 31, 2019.

E. Tenant and Landlord now desire to amend certain of the Lease terms upon the terms and conditions hereinafter described.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby amend the Lease on the terms hereof effective as of the date hereof, notwithstanding anything to the contrary contained therein:

1. Defined Terms. All capitalized terms used in this Third Amendment shall have the respective meanings ascribed to them in the Lease unless otherwise defined in this Third Amendment.

2. Amendment of Term. The Term of the Lease is currently set to expire on December 31, 2019. The Term is hereby amended to expire on February 28, 2015.

3. Abatement of Base Rent. Tenant's obligation to pay Base Rent shall be abated commencing upon Tenant's execution of the lease for new space and continuing through and including February 28, 2015.

4. Abatement of Additional Rent. Tenant's obligation to pay its Pro Rata Share of Expense Excess and Tax Excess shall be abated commencing upon Tenant's execution of the lease for new space and continuing through and including February 28, 2015.

5. Elimination of Option to Renew. Tenant's Option to Renew the term for five (5) years as set forth in Section 11 and Exhibit B of the Second Amendment, is hereby forfeited and of no further force and effect, and the Term shall end on February 28, 2015.

6. Consideration. As consideration for Tenant's agreement to accelerate the expiration of the Lease Term and forfeit the Option to Renew, Landlord shall pay to Tenant the sum of \$400,000.00, such sum to be due and payable within fifteen (15) days of surrender and delivery of the Premises to Landlord at the expiration of the lease Term, so long as Tenant has vacated and surrendered the Premises to Landlord on or before February 28, 2015. In the event Tenant fails to vacate the Premises on or before February 28, 2015, the Base Rent for any hold over period shall be equal to \$40,000 per month, prorated on a per diem basis for the actual period of any hold over.

7. Civil Code Section 1938 Advisory. To Landlord's knowledge, the Premises has not undergone inspection by a Certified Access Specialist.

8. Brokers. Tenant warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this Amendment, other than Harvest Properties, Inc., representing Landlord. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

9. Tenant's Representations. Tenant hereby represents and warrants to Landlord that: (a) Tenant has full power and authority to enter into this Amendment and to perform all of Tenant's obligations under the Lease, as amended by this Amendment, (b) each person (and all of the persons if more than one signs) signing this Amendment on behalf of Tenant is duly and validly authorized to do so, (c) Tenant has not made any assignment, sublease, transfer, conveyance, hypothecation, or other disposition of all or any part of any of the Premises, the Lease, or all or any part of Tenant's interest in the Premises or in the Lease, and (d) on the date hereof, no breach or default by either party has occurred and the Lease, and all of its terms, conditions, covenants, agreements and provisions, except only as modified by this Amendment, are in full force and effect with no defenses or offsets thereto.

10. Successors and Assigns. All the terms and conditions of this Amendment shall be binding upon the respective successors and assigns of the parties hereto.

11. Interpretation. In the event of any conflict between any provision of the Lease and any provision of this Amendment, the provision of this Amendment shall take precedence and govern.

12. Authority. Each person executing this Amendment on behalf of Tenant represents and warrants that he or she is duly and validly authorized to do so and thereby to bind Tenant to all the terms, conditions and covenants of this Amendment.

13. Entire Agreement. This Amendment, together with the Lease, contains the entire agreement of the parties hereto with respect to the subject matter hereof (and is intended as the final expression of such agreement and as a complete and exclusive statement of such agreement). No representations, warranties, covenants or agreements have been made concerning or affecting the subject matter of this Amendment, except as are contained herein and in the Lease. This Amendment (and the Lease, as modified by this Amendment) may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

14. Ratification and Reaffirmation of Lease. Except only as modified by this Amendment, the Lease and all of the terms, covenants, conditions and agreements thereof remain unchanged and shall continue in full force and effect.

15. Execution; Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original as against the party whose signature is affixed thereto, and all executed counterparts taken together shall constitute a single instrument. Executed copies hereof may be delivered by telecopy or other electronic methods and, upon receipt, shall be deemed originals and be binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy or other electronic methods, the parties will use best efforts to deliver originals as promptly as possible after execution.

16. No Offer. Submission of this instrument for examination and signature by Tenant does not constitute an offer to lease or a reservation of or option for lease, and this instrument is not effective as a lease amendment or otherwise until executed and delivered by both Landlord and Tenant.

[signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Amendment as of the date and year first above written.

LANDLORD:

TENANT:

**CALIFORNIA CORPORATE CENTER
ACQUISITION, LLC,**
a Delaware limited liability company

**MARIN CLEAN ENERGY (formerly
MARIN ENERGY AUTHORITY), a**
California joint powers authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____



October 2, 2014

TO: Marin Clean Energy Board of Directors

FROM: Dawn Weisz, Executive Officer

RE: 1. Resolution No. 2014-06 of the Board of Directors of Marin Clean Energy approving the City of Benicia as a member of Marin Clean Energy.
2. Amendment 9 to the MCE JPA Agreement
3. Submittal of Amendment to MCE Implementation Plan and Statement of Intent to the California Public Utilities Commission.
(Agenda Item #06)

ATTACHMENTS: A. Applicant Analysis for the City of Benicia
B. Membership Presentation for City of Benicia
C. Resolution No. 2014-06 of the Board of Directors of Marin Clean Energy approving the City of Benicia as a member of Marin Clean Energy subject to (1) the adoption by the City of Benicia of the ordinance required by Public Utilities Code Section 366.2(c) (10) and such ordinance becoming effective and (2) the execution of the Marin Clean Energy (formerly "Marin Energy Authority") Joint Powers Agreement by the City of Benicia.
D. Amendment 9 to the MCE JPA Agreement

Dear Board Members:

Background

On June 17, 2014, staff received a letter from the City of Benicia expressing interest in MCE membership. Following the receipt of this letter, your Board authorized the completion of a quantitative membership analysis for the purpose of determining projected environmental benefits (e.g. incremental increases in renewable energy deliveries and expected reductions in greenhouse gases (GHGs) related to electric energy consumption) and rate/financial impacts related to the addition of customers located within the City of Benicia. Such analysis was completed on August 29, 2014.

The projected impacts of this prospective membership expansion was entirely positive, demonstrating meaningful increases in renewable energy sales, expected reductions in GHG emissions, and an approximate 3% rate reduction for all MCE customers, both current and prospective.¹

¹ Note that any rate/financial impacts were based on wholesale electricity pricing at the time the quantitative analysis was completed. Such pricing is subject to change. Actual rate/financial impacts will be based on wholesale electricity pricing that is offered to MCE at the time of power supply contract execution.

As a result of these positive findings, the City Council of Benicia plans to consider adoption of the requisite Community Choice Aggregation (“CCA”) ordinance, which states the City’s intent to implement a CCA program through its participation in MCE, on October 7, 2014. The attached Resolution and updated JPA Agreement will comply with the statutory requirements of AB 117, the legislation enabling CCA service in California.

Recommendations:

Approve the following actions, subject to (1) the adoption by the City of Benicia of the ordinance required by Public Utilities Code Section 366.2(c) (10) and such ordinance becoming effective and (2) the execution of the Marin Clean Energy (formerly “Marin Energy Authority”) Joint Powers Agreement by the City of Benicia:

1. Resolution No. 2014-06 of the Board of Directors of Marin Clean Energy approving the City of Benicia as a member of Marin Clean Energy.
2. Amendment 9 to the MCE Joint Powers Authority Agreement
3. Submittal of Amendment to MCE Implementation Plan and Statement of Intent to the California Public Utilities Commission.

Marin Clean Energy Applicant Analysis for the City of Benicia

August 29, 2014

SUMMARY

MCE's currently effective policy regarding new membership requires the completion of a quantitative analysis as part of the preliminary evaluative process. The primary focus of the quantitative analysis is to determine the anticipated net rate impacts that would affect MCE's existing customer base following the addition of the prospective new community – in particular, the quantitative analysis must demonstrate that the addition of the prospective new community will result in a projected net rate reduction for MCE's existing customer base; this is a threshold requirement that must be met before proceeding with further membership activities. In addition, the quantitative analysis addresses the projected environmental impacts that would result from offering CCA service to the prospective new community. More specifically, the analysis prospectively determines whether or not the new community will accelerate greenhouse gas (GHG) reductions (beyond those reductions already achieved by MCE's existing membership) while increasing the amount of renewable energy being used within California's energy market.

MCE has been in discussion with the city of Benicia periodically since October of 2012. In the summer of 2014, MCE received a formal letter from the city of Benicia requesting consideration as a member of MCE. The electric accounts to be considered as part of this membership request include all accounts located within the city of Benicia. On July 3, 2013, the MCE Board of Directors authorized completion of a quantitative membership analysis related to Benicia's membership request. This analysis has been completed and the results are discussed below in this summary report.

In general, the quantitative analysis indicated that rate benefits would likely accrue to existing MCE customers following the addition of prospective CCA accounts located within the city of Benicia. The additional customer base within Benicia would likely result in an approximate 3% rate reduction for MCE customers, including all existing and prospective accounts. The analysis also indicated that including Benicia in MCE's membership would increase the amount of renewable energy being used in California's energy market by approximately 55 thousand MWh per year while reducing GHG emissions by an estimated 15 million pounds of carbon dioxide equivalent per year.¹

ANALYSIS

MCE conducted an analysis of the potential new electric customers to estimate the revenues and costs associated with extending MCE service to Benicia. The analysis incorporated historical monthly electric usage data provided by PG&E for all current electric customers located within the city of Benicia. The

¹ GHG emission reduction estimates are based on MCE's actual 2012 emission factor of 373 lbs CO₂e/MWh and PG&E's reported 2012 emission factor of 445 lbs CO₂e/MWh, as released in June 2014: <http://www.pgecurrents.com/2014/02/06/new-numbers-confirm-pge%E2%80%99s-energy-among-the-cleanest-in-nation/>. The projected GHG savings of 72 lbs CO₂e/MWh (based on the difference between MCE's emission factor and PG&E's emission factor) was multiplied by the projected increase in MCE's annual sales volume resulting from the addition of CCA customers located within Benicia, a volume approximating 206,000 MWh/year. Note that these projections are subject to change.

data indicate the potential for over 13,000 new MCE customers with a potential increase in annual electricity sales approximating 273,000 MWh per year. The aggregate peak demand of these customers is estimated at 48 MW.²

Table 1: 2013 Benicia Electricity Data

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (KWh)
Residential	11,363	66,756	587
Small Commercial	1,499	32,268	2,153
Medium Commercial	146	28,388	19,444
Large Commercial & Industrial	47	144,402	310,542
Agricultural and Pumping	0	0	0
Street Lighting	51	918	1,809
Total	13,105	272,731	334,535
Peak Demand (MW)			48

² These figures are for all electric customers of PG&E within the City. These figures are unadjusted for expected customer participation rates.

As compared to the current MCE customer base shown in Table 2 below, Benicia includes proportionately fewer residential and agricultural accounts. The large commercial and industrial sector accounts for more than half of Benicia’s power consumption. All account types have a larger average kWh per account than the current MCE service area.

Table2: 2013 MCE Electricity Data

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (KWh)
Residential	106,762	618,385	483
Small Commercial	11,755	195,505	1,386
Medium Commercial	884	155,315	14,642
Large Commercial	329	188,289	47,694
Industrial	<20	121,391	633,830
Agricultural and Pumping	99	3,880	3,266
Street Lighting	850	14,929	1,464
Total	120,695	1,297,694	896
Peak Demand (MW)			221

In regards to seasonal consumption patterns, Benicia electric usage peaks during the summer months, whereas the current MCE load tends to peak during the colder winter months of December and January. These differences can be seen in comparing Figure 1 and Figure 2 below. The seasonal load diversity can help contribute to a flatter overall load profile for MCE, which provides benefits in resource planning and supply management.

Figure 1: Benicia Hourly Load Profile (KW)

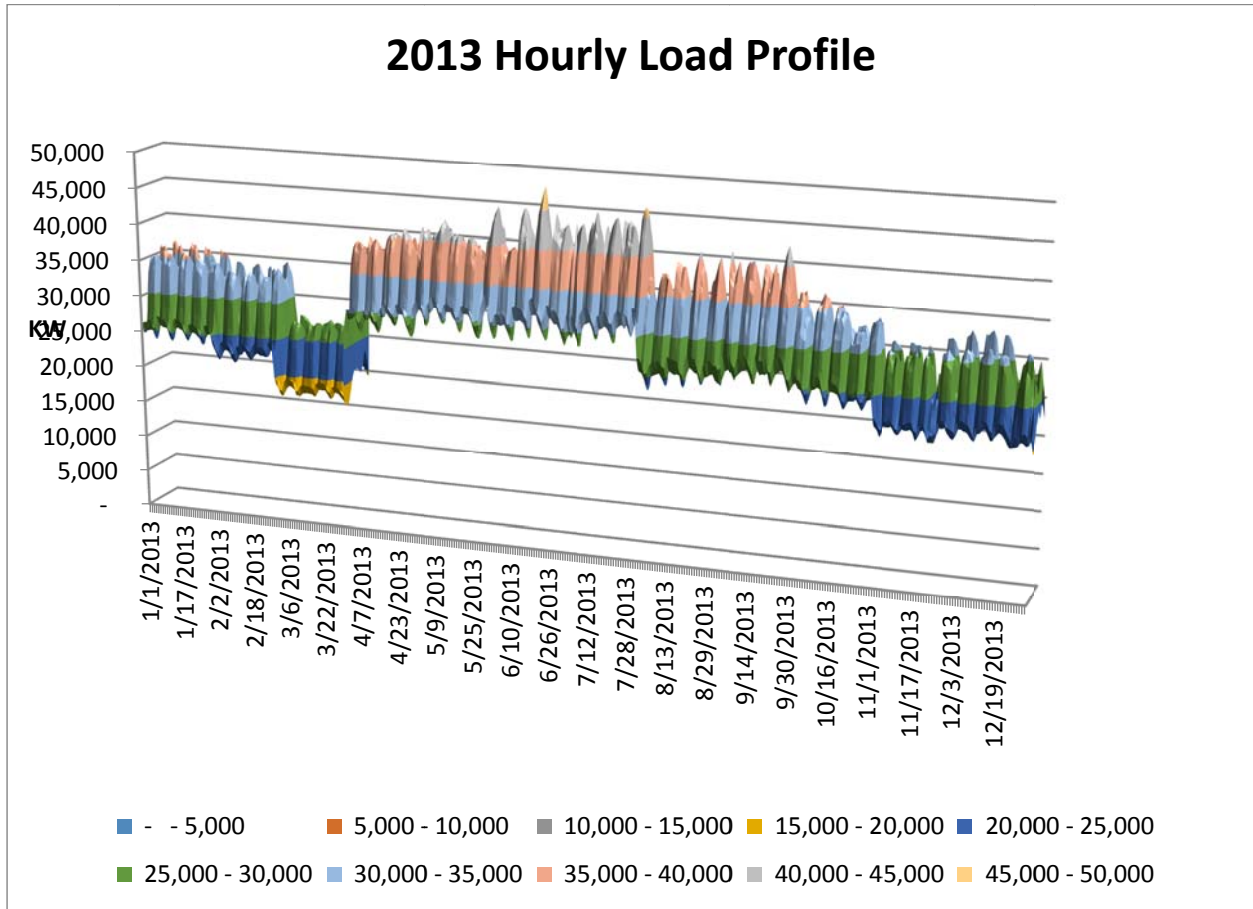
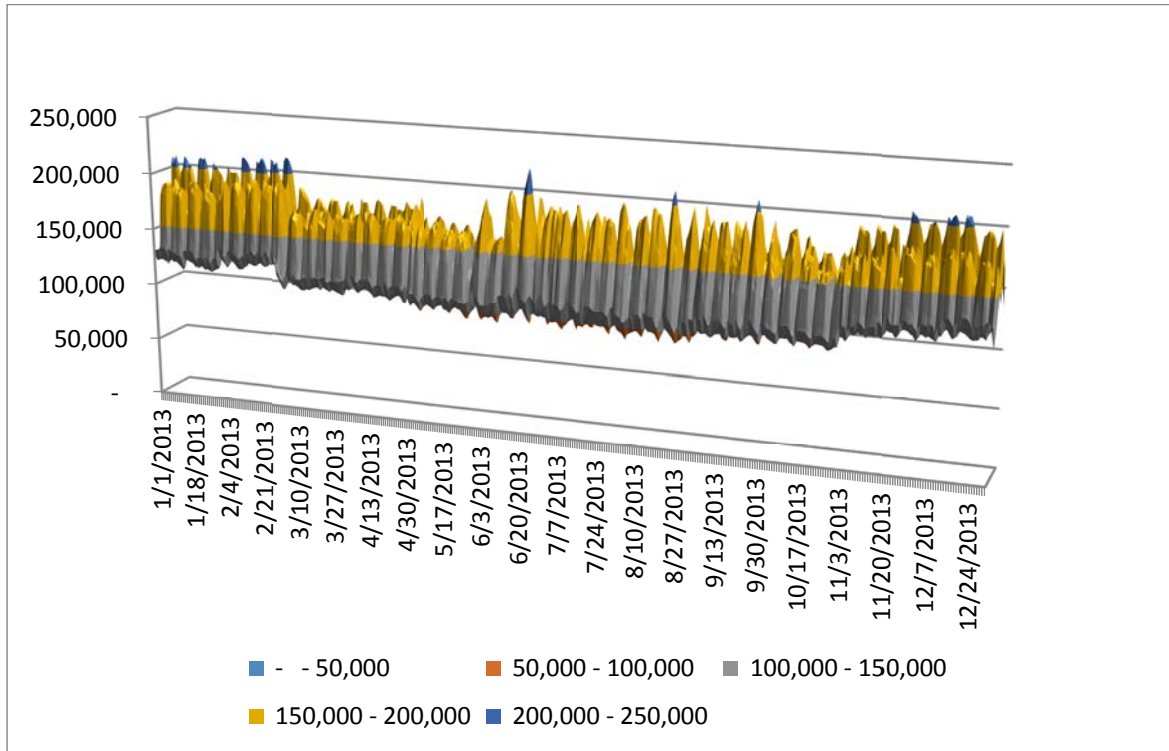


Figure 2: MCE Hourly Load Profile (KW)



RATE IMPACTS

For purposes of the rate impact analysis, it was assumed that service would be initiated to Benicia customers in April, 2015 and that 80% of customers who would be offered CCA service would elect to participate in the MCE program. This would equate to an increase in annual MCE electricity sales of 206,238 MWh or approximately 16%. The rate impact was examined beginning with the 2015/2016 fiscal year, with the new service accounts switched to MCE service during the month of April (April 1st through April 30th, depending on each customer’s scheduled meter reading schedule).³

Incremental revenues and costs were quantified for the additional Benicia customers, and the revenue surplus (based on the difference between projected revenues and costs directly related to the addition of Benicia customers) was also calculated for the year. The surplus is assumed to offset a share of MCE’s fixed costs and can be used to reduce overall MCE rates. The incremental cost analysis accounts for ongoing costs related to additional power supplies, customer billing, customer service support (call center), and PG&E service fees associated with the additional customers. One-time costs associated with the expansion of MCE to Benicia are not included in these figures and are discussed below. Table 3 presents the estimated rate impact for the 2015/2016 fiscal year.

Table 3: FY2015/2016 MCE Rate Impact from Benicia

Volume (MWh)	206,238

³ During the first year, the increase in annual sales volume is slightly lower, estimated at 206,238 MWh, due to the gradual transfer of accounts to MCE service during the first month.

Revenue	\$ 16,573,296
Costs	
Power Supply Cost	\$ 12,487,830
Billing and Other Costs	\$ 328,225
Total Cost	\$ 12,816,055
Rate Benefit	\$ 3,757,240
MCE Rate Impact	3%

The rate impact analysis indicates that the addition of Benicia customers to MCE’s total customer base would provide benefits to MCE ratepayers; it is estimated that expanding MCE service to Benicia would allow for MCE rates to be 3% lower than without such customers.

Additional costs related to the expansion would be incurred prior to initiation of service to the new customers. These costs would be incurred for regulatory, resource planning and procurement activities that would be necessary to incorporate the new member community and its customers into MCE as well as for communication and outreach to the new customers. The projected implementation costs related to a Benicia expansion are expected to be less than the \$350,000 expended in preparation for the expansion to Richmond. This appears to be a reasonable assumption because existing staff (previously added to support the Richmond expansion) and technical resources can be leveraged to support the Benicia expansion; the number of prospective customer accounts within Benicia is also less than half of the prospective customer base that was transitioned to MCE service during the Richmond expansion. It should also be noted that the regulatory, resource planning and procurement costs would not be entirely attributable to Benicia if there are other new members brought into MCE at the same time. To the extent that other municipalities are contemporaneously added, such activities could be performed jointly rather than at separate times for each new member.

RENEWABLE ENERGY IMPACTS

Renewable energy requirements were calculated for Benicia to ensure compliance with the statewide Renewables Portfolio Standard (RPS) as well as the more aggressive MCE renewable energy content standards adopted by MCE. The total renewable energy requirement associated with prospective expansion to Benicia would be approximately 109 thousand MWh annually. This renewable energy volume is equivalent to the energy produced by 12 MW of geothermal capacity (or a similar baseload renewable generating technology using a fuel source such as biomass or landfill gas) or approximately 42 MW to 62 MW of solar generating capacity, depending upon location and technology. Including Benicia’s electric customers in MCE service will increase the amount of renewable energy being used in California’s energy market by approximately 55 thousand MWh annually based on the increased renewable energy procurement targets voluntarily adopted by MCE’s governing Board relative to California’s then-current RPS mandate (which must be followed by PG&E).

GHG IMPACTS

With regard to projected GHG emission reductions that would result from the expansion of MCE service to Benicia, estimates were derived by comparing the most current, validated emission statistics related

to the MCE and PG&E electric supply portfolios. With regard to these statistics, PG&E and MCE both recently reported their respective emission statistics for the 2012 calendar year. Due to typical timelines affecting the availability of such information, PG&E's current statistics (focused on the 2012 calendar year) will generally reference data related to utility operations occurring 12 to 24 months prior to the current calendar year. This waiting period is necessary to facilitate the compilation of final electric energy statistics (e.g., customer energy use and renewable energy deliveries) and to allow sufficient time for data computation, review and third-party audit before releasing such information to the public. As noted by PG&E, its 2012 emission factor was determined to be 445 lbs CO₂/MWh. By comparison, MCE's aggregate portfolio emission factor for the 2012 calendar year was determined to be 373 lbs CO₂e/MWh, a difference of 19%.

MCE's 2012 emission factor was derived by using publicly available emission statistics determined by the California Air Resources Board (CARB) for certain unspecified electricity purchases included within the MCE supply portfolio as well as assumed zero carbon emission rates for various renewable energy purchases and deliveries from non-polluting power sources, such as hydroelectric generators. With regard to electricity purchases from unspecified sources, or "system power," as reported on a California retail electricity seller's annual Power Content Label, CARB has assigned an emissions rate of 943.58 lbs CO₂e/MWh. This emission rate can be referenced in section 95111(b)(1) of CARB's February 2014 update to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2013-clean.pdf>. PG&E appears to have applied a similar factor when calculating emissions associated with unspecified generating sources.

In 2012, MCE's supply portfolio was heavily weighted towards non-carbon emitting resources. In fact, over 60% of MCE's energy supply was attributable to various renewable energy and hydroelectric purchases, which do not emit GHGs (MCE's 2013 and 2014 procurement percentages reflect similar ratios). When determining MCE's aggregate portfolio emission factor, the aforementioned CARB statistic of 943.58 lbs CO₂e/MWh was applied to MCE's system energy purchases, which totaled 225,593 MWh during the 2012 calendar year. All other non-emitting resources were assigned an emission factor of zero. As such, MCE's portfolio emissions for the 2012 calendar year totaled approximately 213 million pounds. This emission total was divided by MCE's aggregate sales volume of 570,144 MWhs, resulting in an MCE portfolio emissions rate of 373 lbs/MWh, for the 2012 calendar year. The following table provides additional detail regarding these emissions computations for MCE's 2012 supply portfolio.

Table 4: MCE 2012 Greenhouse Gas Emissions

2012 Calendar Year	MWh Purchased/Sold	% Total	Emission Rate (lbs CO ₂ e/MWh)	Total Emissions (lbs)
Total Renewable Energy	304,551	53.4%	0	0
RPS – Eligible	166,522	29.2%	0	0
Non-RPS Eligible Renewable	138,029	24.2%	0	0
Zero Carbon	40,000	7.0%	0	0
System Power	225,593	39.6%	944	212,864,133
Totals	570,144	100%	373	212,864,133

To estimate the projected GHG emissions reductions that would likely result from the addition of prospective CCA customers located within the city of Benicia, MCE calculated the difference between its own emission factor (373 lbs CO₂e/MWh) and the related metric reported by PG&E (445 lbs CO₂/MWh): 72 lbs CO₂/MWh. This difference was multiplied by the projected increase in annual electricity sales that would result from the addition of Benicia's CCA customers (206,238 MWh), resulting in a projected GHG emissions savings related to the transition of Benicia's customers to MCE's cleaner electricity supply. The projected emissions savings/reduction related to this service transition (from PG&E to MCE) was determined to be approximately 15 million pounds of carbon dioxide equivalent per year. It is noteworthy that the future emission factors reported by MCE and PG&E will likely differ from the statistics applied in this analysis – this is due to a variety of factors, including planned/unplanned changes in renewable energy procurement (including planned increases in California's RPS procurement requirements), variations in hydroelectric power production (which may change substantially from year to year based on prevailing regional hydrological conditions) and changes/adjustments in the general procurement policies of each service provider as well as many other factors. Also note that MCE has committed to assembling a power supply portfolio that not only exceeds the renewable energy content offered by PG&E but also provides customers with a "cleaner" energy alternative, as measured by a comparison of the portfolio GHG emission rate (or emission factor) published by each organization. As such, MCE plans to continue procuring electricity from non-GHG emitting resources in sufficient quantities to maintain an emission rate that is continually lower than PG&E's.



MCE Membership Expansion

Program Impact Analysis: City of Benicia

Marin Clean Energy | October 2, 2014



MCE's Current Customer Base

Key Statistics (2014 – projected)

- **Customer base \approx 125,000**
- **Projected annual energy sales (2014) \approx 1,300,000 MWh**
- **Projected peak demand \approx 250 MW**
- **Projected RPS-eligible procurement: 27%+**
- **Projected total renewable procurement: 50%+**
- **Projected carbon free procurement: 60%+**
- **Projected portfolio emission rate: \approx 370 lbs CO²e/MWh**

Prospective Addition of Benicia

Summary

- **June, 2014: MCE received letter expressing membership interest from Benicia**
- **July 3, 2014: MCE Governing Board authorized completion of a quantitative membership analysis**
- **August 29, 2014: draft quantitative analysis completed by MCE**
- **Analytical findings are favorable:**
 - **≈3% rate reduction for all MCE customers (existing and prospective)**
 - **55,000 MWh annual increase in statewide renewable energy consumption**
 - **15 million pound annual GHG reduction**

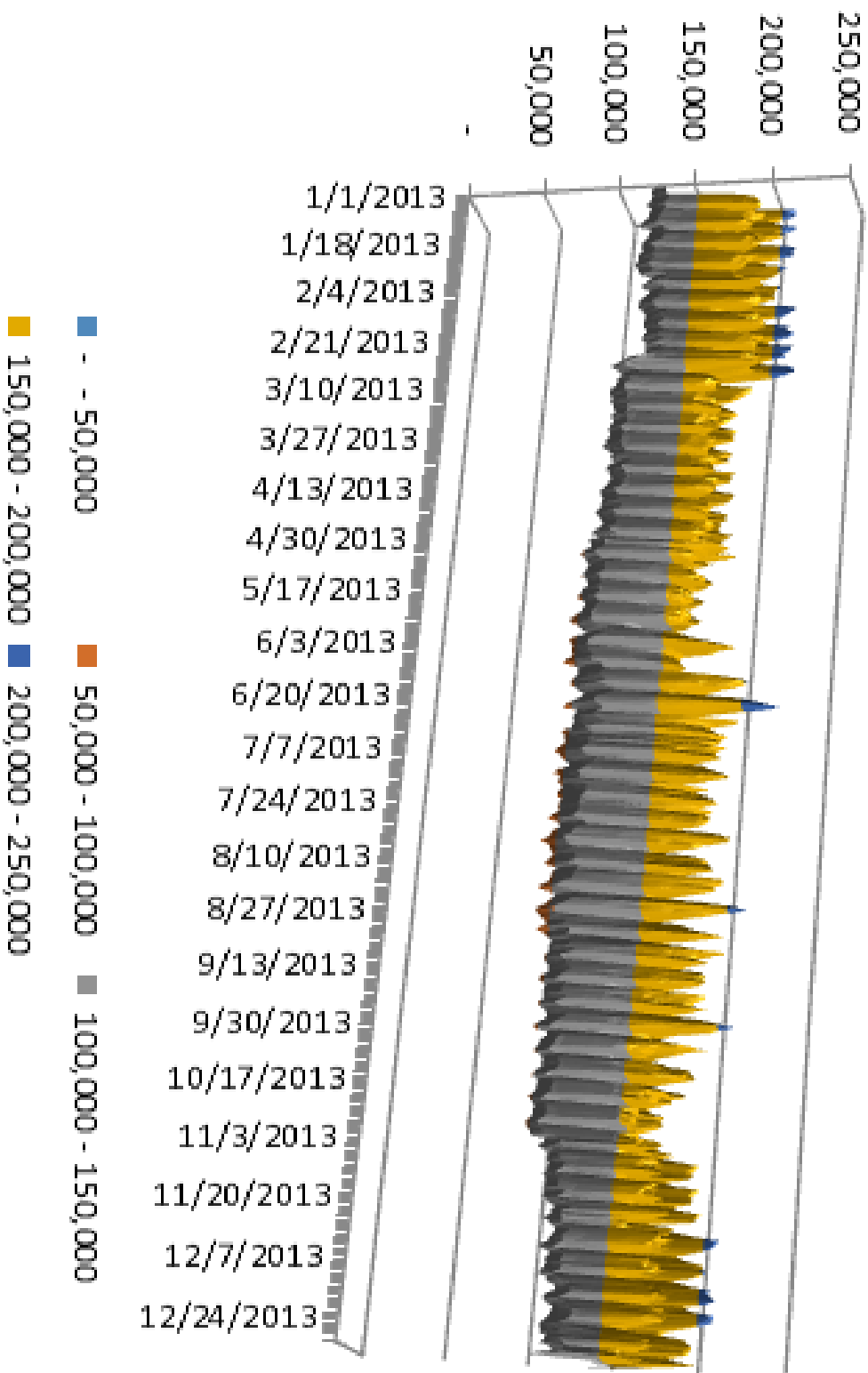
Benicia Customer Base

Classification	Accounts	Annual Energy (MWh)	Monthly Energy (per account, kWh)
Residential	11,363	66,756	587
Small Commercial	1,499	32,268	2,153
Medium Commercial	146	28,388	19,444
Large Commercial and Industrial	47	144,402	310,542
Street Lighting	51	918	1,809
Total	13,105	272,731	1,734
Peak Demand (MW)			48

Key Benicia Statistics

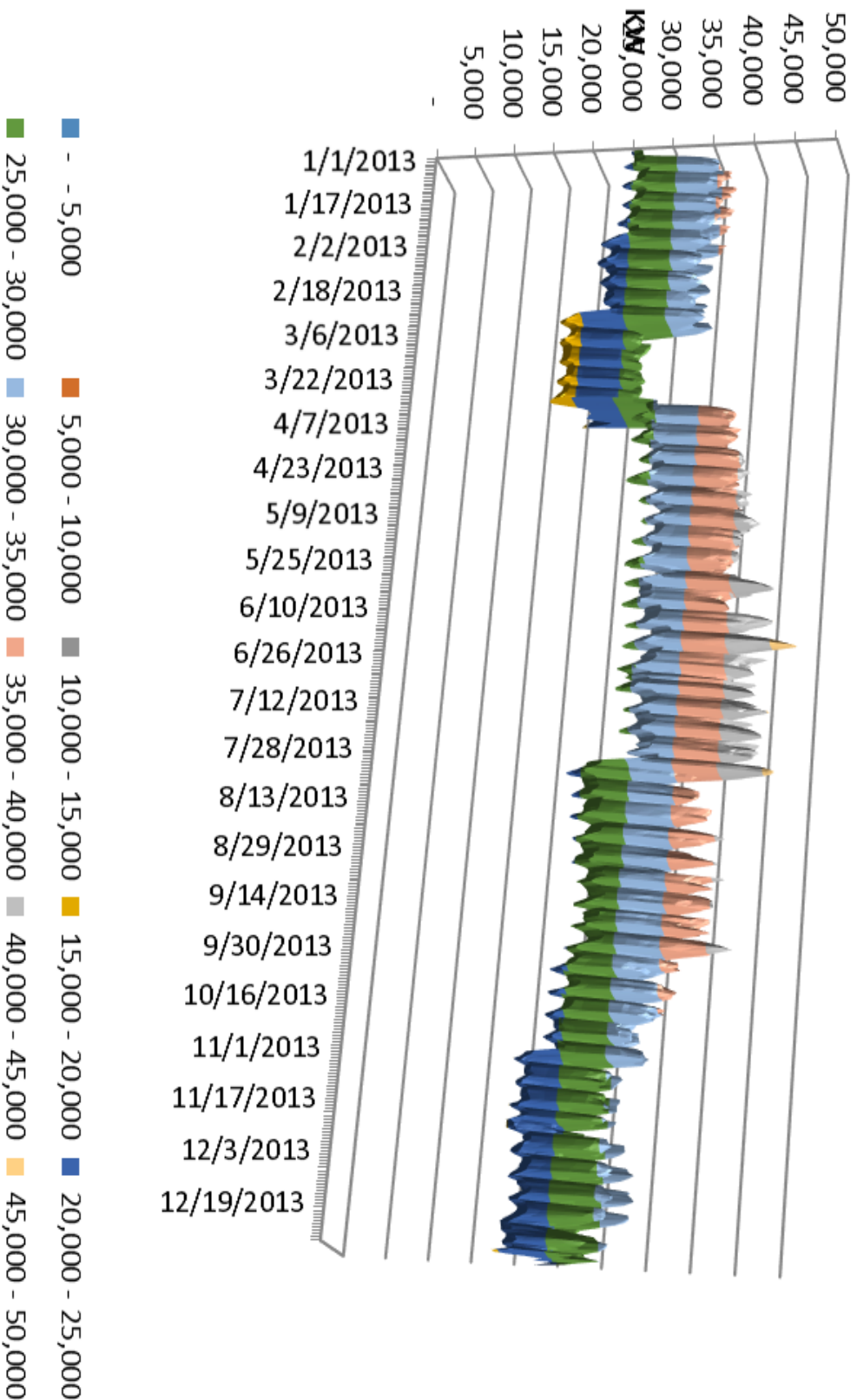
- **Approx. 13,000 potential new customers**
- **Potential retails sales increase of $\approx 273,000$ MWh/year**
- **Aggregate peak demand increase ≈ 48 MW**
- **Customer mix more weighted toward commercial and industrial uses than current MCE customer base**
- **Per account energy use for all sectors comparatively higher in Benicia**
- **Average monthly usage (across all accounts) is double that of MCE's current customer base: 1,734 kWh/month vs. 896 kWh/month**

MCE Hourly Load Profile



Benicia Hourly Load Profile

2013 Hourly Load Profile



Key Assumptions & Projected Outcomes

- Service assumed to commence in April 2015
- Assumed 80% participation rate (bundled + direct access)
- Participatory rate translates to a retail sales increase of **≈205,000 MWh, or approximately 16%**
- Projected revenue surplus
- Revenue surplus was assumed to offset a share of MCE's fixed costs... which would reduce MCE's overall rates
- Incremental cost analysis accounts for: additional power supply, customer billing, call center support, PG&E service fees
- Overall rate reduction approximating 3%

Cost & Revenue Summary

Volume (MWh)	206,238
<i>Revenue</i>	\$16,573,296
<i>Costs</i>	
Power Supply Cost	\$12,487,830
Billing and Other Costs	\$328,225
Total Cost	\$12,816,055
Rate Benefit	\$3,757,240
MCE Rate Impact	3%

RESOLUTION NO. 2014-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY APPROVING THE CITY OF BENICIA AS A MEMBER OF MARIN CLEAN ENERGY SUBJECT TO (1) THE ADOPTION BY THE CITY OF BENICIA OF THE ORDINANCE REQUIRED BY PUBLIC UTILITIES CODE SECTION 366.2(C)(10) AND SUCH ORDINANCE BECOMING EFFECTIVE AND (2) THE EXECUTION OF THE MARIN CLEAN ENERGY (FORMERLY MARIN ENERGY AUTHORITY) JOINT POWERS AGREEMENT BY THE CITY OF BENICIA.

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA"); and,

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy ("MCE"), (formerly the Marin Energy Authority) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time ("MCE Joint Powers Agreement"); and,

WHEREAS, on February 2, 2010, the California Public Utilities Commission certified the "Implementation Plan" of MCE, confirming MCE's compliance with the requirements of the Act; and,

WHEREAS, MCE members include the following 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 County of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

WHEREAS, the City of Benicia requested membership in Marin Clean Energy on June 17, 2014; and,

WHEREAS, the MCE Board of Directors approved the membership request of the City of Benicia on June 3, 2014 subject to a membership analysis yielding a positive result; and

WHEREAS, the membership analysis for the City of Benicia was completed on August 29, 2014, and yielded a positive result.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the Board of Directors of Marin Clean Energy that the City of Benicia is approved as a member of the Marin Clean Energy subject to (1) the adoption by the City of Benicia of the Ordinance

required by Public Utilities Code Section 366.2(c)(10) and such ordinance becoming effective and (2) the execution of the Marin Clean Energy Joint Powers Agreement by the City of Benicia.

PASSED AND ADOPTED at a regular meeting of the Marin Clean Energy Board of Directors on this Second day of October, 2014 by the following vote:

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

CHAIR, MARIN CLEAN ENERGY

ATTEST:

SECRETARY, MARIN CLEAN ENERGY BOARD

**AMENDMENT NO. 9 TO MARIN ENERGY AUTHORITY
JOINT POWERS AUTHORITY AGREEMENT**

1. Exhibit B to the Agreement, which includes a “List of the Parties” to the Agreement, is hereby amended to reflect the Marin Clean Energy (formerly the Marin Energy Authority) current membership, which includes the following local public entities:

City of Belvedere
City of Benicia
Town of Corte Madera
Town of Fairfax
City of Larkspur
City of Mill Valley
City of Novato
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of Sausalito
Town of Tiburon
County of Marin
County of Napa

2. Exhibit C to the Agreement, which specifies “Annual Energy Use” for each party to the Agreement, is hereby amended to reflect annual energy use within each member’s jurisdiction for the 2014 calendar year, inclusive of the City of Benicia.

3. Exhibit D to the Agreement, which specifies “Voting Shares” for each party to the Agreement, is hereby amended to reflect the current voting shares of each member in accordance with the provisions of Section 4.9.2 of the Agreement.

4. This Amendment No.9 does not limit the authority of the Board to update Exhibits B, C and D in the future without further amending the Agreement as provided by Sections 1.3 and 4.9.2.3 of the Agreement.

This Amendment No. 9 to the Marin Energy Authority Joint Powers Authority Agreement was duly adopted by the Board of Directors in accordance with Article 8.4 of this Agreement on October 2, 2014.

Exhibit C
To the
Joint Powers Agreement
Marin Clean Energy
- Annual Energy Use -

This Exhibit C is effective as of October 2, 2014.

Party	kWh (2012/2013*)
City of Belvedere	9,973,170
City of Benicia	272,731,094
Town of Corte Madera	62,093,107
Town of Fairfax	24,700,647
City of Larkspur	63,174,199
City of Mill Valley	69,176,164
City of Novato	286,565,119
City of Richmond	581,012,267
Town of Ross	13,529,793
Town of San Anselmo	46,642,417
City of San Pablo	97,383,170
City of San Rafael	347,362,327
City of Sausalito	48,099,763
Town of Tiburon	40,913,144
County of Marin	330,023,521
County of Napa	348,095,521
Authority Total Energy Use	2,641,475,423

*Data Provided by PG&E

**Exhibit D
To the
Joint Powers Agreement
Marin Clean Energy
- Voting Shares -**

This Exhibit D is effective as of October 2, 2014.

Party	kWh (2012/2013*)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of Belvedere	9,973,170	3.33%	0.19%	3.52%
City of Benicia	272,731,094	3.33%	5.16%	8.50%
Town of Corte Madera	62,093,107	3.33%	1.18%	4.51%
Town of Fairfax	24,700,647	3.33%	0.47%	3.80%
City of Larkspur	63,174,199	3.33%	1.20%	4.53%
City of Mill Valley	69,176,164	3.33%	1.31%	4.64%
City of Novato	286,565,119	3.33%	5.42%	8.76%
City of Richmond	581,012,267	3.33%	11.00%	14.33%
Town of Ross	13,529,793	3.33%	0.26%	3.59%
Town of San Anselmo	46,642,417	3.33%	0.88%	4.22%
City of San Pablo	97,383,170	3.33%	1.84%	5.18%
City of San Rafael	347,362,327	3.33%	6.58%	9.91%
City of Sausalito	48,099,763	3.33%	0.91%	4.24%
Town of Tiburon	40,913,144	3.33%	0.77%	4.11%
County of Marin	330,023,521	3.33%	6.25%	9.58%
County of Napa	348,095,521	3.33%	6.59%	9.92%
	2,641,475,423	50.00%	50.00%	103.33%

*Data Provided by PG&E



October 2, 2014

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Power Purchase Agreement with RE Mustang, LLC (Agenda #07)

ATTACHMENT: Draft Power Purchase Agreement with RE Mustang, LLC

Dear Board Members:

SUMMARY:

As a result of this year's Open Season Procurement Process ("Open Season") for Renewable Energy ("RE"), staff received a an offer from Recurrent Energy for a power purchase agreement for output from a new solar photovoltaic facility located in California's Central Valley. The facility is being developed by RE Mustang LLC, a wholly owned subsidiary of San Francisco based Recurrent Energy, the same counterparty with which MCE has a PPA for the RE Kansas project. RE Kanas is in the final stage of construction and is expected to be online in January 2015.

The RE Mustang facility is well into the development process, and the developer has two separate PPAs in place for 70 MW of the facility's output beginning in 2017. Staff brought this offer to the Ad Hoc contracts committee which recommended that staff move forward with contract negotiations. Staff negotiated the attached draft Power Purchase Agreement with RE Mustang LLC for the purchase of energy, capacity and renewable attributes from the project. The project has a guaranteed capacity of 30 MW AC and is located near the City of Lemoore in Kings County, CA. This project was particularly interesting due to its attractive price, the project's viability, MCE existing relationship with the developer and their strong track record in developing similar projects.

Renewable energy volumes produced by the facility will complement MCE's existing RE supply with output from a regionally located generating project. The timing of deliveries will help replace the planned reduction in renewable energy deliveries under the Shell Energy North America (SENA) agreement. Additional information is provided below regarding the prospective counterparty.

One special consideration that staff would like to bring to the attention for the MCE board is the potential impact of the end of the investment tax credit (ITC) in December of 2016. Unless the ITC is extended, post 2016 renewable energy projects are expected to be priced up to 30% higher than recent offers received by MCE. Staff considered the impacts of this scenario should the RE Mustang not meet its delivery obligations under

the PPA and incorporated adequate performance security under the PPA to allow up to one year to find a replacement project.

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 Mustang LLC

- Project: 30 MW of a new 100 MW solar PV project with 28% capacity factor – capable of supplying the annual electric needs of approximately 14,000 MCE residential customers.
- Project location: Lemoore, California (Kings County), in PG&E service territory.
- Project will utilize technologically proven ground mount solar PV technology
- Guaranteed commercial operation date: January 1, 2016 with deliveries to MCE commencing January 1, 2017
- Contract term: 15 years
- Delivery profile: peaking
- Expected annual energy production: approximately 84,400 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production: 70% of projected annual deliveries
- Energy price: fixed energy price applicable to each year of contract
- No credit/collateral obligations for MCE
- MCE to receive financial compensation in the event of Seller's failure to successfully achieve certain development milestones
- MCE to receive financial protection from costs associated with changes in law and compliance therewith

Summary:

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

- The project size supports MCE'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 power purchase agreement with RE Mustang LLC for additional renewable energy supply.

Recurrent draft of September 22, 2014

POWER PURCHASE AND SALE AGREEMENT COVER SHEET

Seller: RE Mustang 4 LLC, a Delaware limited liability company

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A 30 MW AC photovoltaic electric generating facility located in Kings County, California

Guaranteed Commercial Operation Date: January 1, 2018

Delivery Term: The Delivery Term will be the period beginning the later of January 1, 2018, or the date on which Commercial Operation is achieved, through the date that is the fifteenth (15th) anniversary of the later of January 1, 2018 or the date on which Commercial Operation is achieved.

Contract Price: The Contract Price is [XXXX].

Product:

Energy

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

Expected Energy for Contract Year 1: 84,404 MWh (subject to Annual Adjustment set forth in Schedule F-1)

Scheduling Coordinator: Buyer/Buyer Third-Party

Development Security: [\$xxxxxxx]

Performance Security: [\$xxxxxxx]

Notice Addresses:

Seller:

RE Mustang 4 LLC
 c/o Recurrent Energy
 300 California Street, Ste. 700
 San Francisco, CA 94104
 Attention: Director of Asset Management
 Phone No.: (415) 675-1500 ext. 495
 Fax No.: (415) 675-1501
 Email: ops@recurrentenergy.com

With a copy to:

RE Mustang 4 LLC
c/o Recurrent Energy
300 California Street, Ste. 700
San Francisco, CA 94104
Attention:
Office of the General Counsel
Phone No.: (415) 675-1500
Fax No.: (415) 675-1501
Email: legal@recurrentenergy.com

Scheduling:

RE Mustang 4 LLC
c/o Recurrent Energy
300 California Street, Ste. 700
San Francisco, CA 94104
Attention: Director of Asset Management
Email: ops@recurrentenergy.com
Phone No.: (415) 675-1500 ext. 495
Fax No.: (415) 675-1501

Buyer:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attention: Greg Brehm, Director of Power Resources
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

With a copy to:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, Oregon 97205
Attention: Stephen Hall
Fax No.: (503) 290-2405
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

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

SELLER
RE Mustang 4 LLC

BUYER
Marin Clean Energy

By: _____
Name: _____
Title: _____

By: _____
MCE Chairperson

By: _____
MCE Executive Officer

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation.	14
ARTICLE 2 TERM; CONDITIONS PRECEDENT	15
2.1 Contract Term.	15
2.2 Conditions Precedent.	15
2.3 Progress Reports.	16
ARTICLE 3 PURCHASE AND SALE	16
3.1 Sale of Product.....	16
3.2 Sale of Green Attributes.....	17
3.3 Compensation.	17
3.4 Imbalance Energy.	17
3.5 Ownership of Renewable Energy Incentives.....	18
3.6 Future Environmental Attributes.	18
3.7 Intentionally Omitted.....	18
3.8 Capacity Attributes.	18
3.9 CEC Certification and Verification.	19
3.10 Eligibility.	19
3.11 California Renewables Portfolio Standard.....	19
3.12 Compliance Expenditure Cap.	19
ARTICLE 4 OBLIGATIONS AND DELIVERIES	20
4.1 Delivery.....	20
4.2 Title and Risk of Loss.	21
4.3 Scheduling Coordinator Responsibilities.....	21
4.4 Forecasting.....	23
4.5 Dispatch Down/Curtailment	24
4.6 Reduction in Delivery Obligation.....	25
4.7 Expected Energy and Guaranteed Energy Production.....	25
4.8 Financial Statements.	25
ARTICLE 5 TAXES.....	26
5.1 Allocation of Taxes and Charges.....	26
5.2 Cooperation.....	26
ARTICLE 6 MAINTENANCE OF THE FACILITY	26
6.1 Maintenance of the Facility.	26
6.2 Maintenance of Health and Safety.....	26

TABLE OF CONTENTS
(continued)

	Page
6.3 Shared Facilities.....	26
ARTICLE 7 METERING.....	27
7.1 Metering.....	27
7.2 Meter Verification.....	27
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	27
8.1 Invoicing.....	27
8.2 Payment.....	28
8.3 Books and Records.....	28
8.4 Payment Adjustments; Billing Errors.....	28
8.5 Billing Disputes.....	28
8.6 Netting of Payments.....	29
8.7 Seller’s Development Security.....	29
8.8 Seller’s Performance Security.....	29
ARTICLE 9 NOTICES.....	30
9.1 Addresses for the Delivery of Notices.....	30
9.2 Acceptable Means of Delivering Notice.....	30
ARTICLE 10 FORCE MAJEURE	30
10.1 Definition.....	30
10.2 No Liability If a Force Majeure Event Occurs.....	31
10.3 Notice.....	31
10.4 Termination Following Force Majeure Event.....	31
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	32
11.1 Events of Default.....	32
11.2 Remedies; Declaration of Early Termination Date.....	34
11.3 Termination Payment.....	34
11.4 Notice of Payment of Termination Payment.....	35
11.5 Disputes With Respect to Termination Payment.....	35
11.6 Rights And Remedies Are Cumulative.....	35
11.7 Mitigation.....	35
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	35
12.1 No Consequential Damages.....	35
12.2 Waiver and Exclusion of Other Damages.....	35
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	36

TABLE OF CONTENTS
(continued)

	Page
13.1 Seller’s Representations and Warranties	36
13.2 Buyer’s Representations and Warranties	37
13.3 General Covenants	38
ARTICLE 14 ASSIGNMENT	38
14.1 General Prohibition on Assignments	38
14.2 Permitted Assignment by Seller.....	39
14.3 Permitted Assignment by Buyer	39
ARTICLE 15 LENDER ACCOMMODATIONS	39
15.1 Granting of Lender Interest.....	39
15.2 Rights of Lender	40
15.3 Cure Rights of Lender.....	40
ARTICLE 16 DISPUTE RESOLUTION	41
16.1 Governing Law.	41
16.2 Dispute Resolution.....	41
16.3 Attorneys’ Fees.	41
ARTICLE 17 INDEMNIFICATION.....	41
17.1 Indemnification.....	41
17.2 Claims.	41
ARTICLE 18 INSURANCE.....	42
18.1 Insurance.....	42
ARTICLE 19 CONFIDENTIAL INFORMATION	43
19.1 Definition of Confidential Information.....	43
19.2 Duty to Maintain Confidentiality	44
19.3 Irreparable Injury; Remedies	44
19.4 Disclosure to Lender	44
19.5 Public Statements.....	44
ARTICLE 20 MISCELLANEOUS	44
20.1 Entire Agreement; Integration; Exhibits.....	44
20.2 Amendments	44
20.3 No Waiver.....	45
20.4 No Agency, Partnership, Joint Venture or Lease.....	45
20.5 Severability	45
20.6 Mobile-Sierra	45

TABLE OF CONTENTS
(continued)

	Page
20.7 Counterparts	45
20.8 Facsimile or Electronic Delivery	45
20.9 Binding Effect.....	45
20.10 No Recourse to Members of Buyer	46
20.11 Change in Electric Market Design.....	46

Exhibits:

Exhibit A	Description of Facility
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Contract Price
Exhibit D	Emergency Contact Information
Exhibit E	Form of Guaranty
Exhibit F	Guaranteed Energy Production Damages Calculation
Schedule F-1	Expected Energy
Exhibit G	[Reserved]
Exhibit H	Quarterly Milestone Progress Reporting Form
Exhibit I	Form of Commercial Operation Certificate
Exhibit J	Form of Construction Start Certificate
Exhibit K	Buyer Bid Curtailment and Buyer Curtailment Orders

POWER PURCHASE AND SALE AGREEMENT

This 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 intends to develop, design, construct, and operate the photovoltaic electric generating facility to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of thirty (30) MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all 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 Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

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

“**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.

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

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

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

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause

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

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

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

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

(a) CAISO provides notice to a Party or Buyer’s SC, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

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

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period. The duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up; *provided* that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in Exhibit K.

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

“**CAISO Charges Invoice**” has the meaning set forth in Section 4.3(d).

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

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

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

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

“**CEC Certification and Verification**” means the certification and verification process that the CEC has established to determine whether the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and whether Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

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

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

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

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

“**Contract Price**” has the meaning set forth in Section 3.3.

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

“Contract Year” means each calendar year during the Contract Term, commencing on the first day of the Delivery Term, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Delivery Term.

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

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

“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 Cap” is the yearly quantity per Contract Year, in MWh, equal to [xx] hours times Installed Capacity.

“Curtailment Order” means any of the following:

- (a) CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;
- (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 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) a curtailment ordered by 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

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

provided, however, that Curtailment Order shall not include any Buyer Bid Curtailment or Buyer Curtailment Order.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

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

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

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period or pursuant to Section 3.3(e), which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

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

"Delivered Energy" means all Energy produced from the Facility during the Delivery Term as measured in MWh at the CAISO revenue meter of the Facility and net of all Electrical Losses.

"Delivery Point" means the PNode designated by CAISO for the Facility at the 230kV breaker position of the Facility's 230 kV switching station connecting to PG&E's Gates – Gregg 230 kV and Gates – McCall 230 kV Transmission Lines, which PNode designation will be provided to Buyer by Seller once available from CAISO.

"Delivery Term" has the meaning set forth in the Cover Sheet, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

“**Development Security**” means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount equal to the amount specified on the Cover Sheet.

“**Distribution Loss Factor**” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

“**Early Termination Date**” has the meaning set forth in Section 11.2.

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

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

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

“**Electrical Losses**” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

“**Energy**” means metered electrical energy, measured in MWh, which is produced by the Facility.

“**Energy Supply Bid**” has the meaning set forth in the CAISO Tariff.

“**Event of Default**” means either a Seller Default or Buyer Default as specified in Article 11.

“**Expected Energy**” has the meaning set forth in Exhibit F, Schedule F-1.

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

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

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

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

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to 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., NP-15), 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 Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

“**Guaranteed Capacity**” means thirty (30) MW AC capacity measured at the Delivery Point.

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

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

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

“**Guarantor**” means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100 million), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

“**Imbalance Energy**” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 17.1.

“**Indemnifying Party**” has the meaning set forth in Section 17.1.

“**Installed Capacity**” means the actual generating capacity of the Facility at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

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

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

“**Interconnection 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 8.2.

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

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form reasonably acceptable to Buyer.

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

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets,

comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, Resource Adequacy Benefits, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Exhibit F.

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

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

“**Multiplier**” has the meaning set forth in Section 3.8(c).

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour.

“**Negative LMP**” means, in any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“**Negative LMP Costs**” has the meaning set forth in Section 3.3(c).

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

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

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

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

“**Participating Intermittent Resource Protocol**” 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**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet.

“**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.

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

“**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.

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

“**RA Deficit Payments**” has the meaning set forth in Section 3.8(c).

“**RA Guarantee Date**” means the earlier of (a) the first date on which Buyer may use any Resource Adequacy Benefits provided by the Facility in an RA Showing or (b) the Commercial Operation Date.

“**RA Showing**” means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

“**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 and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

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

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

“**Scheduled Energy**” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by 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.

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

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

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

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

“**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 Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

“**Terminated Transaction**” has the meaning set forth in Section 11.2.

“**Transmission Provider**” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

“**WECC**” means the Western Electricity Coordinating Council or its successor.

“**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 the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for 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.** 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) Seller shall have delivered to Buyer a completion certificate from an licensed professional engineer substantially in the form of Exhibit I;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

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

(d) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial

Operation has been granted by the PTO and CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

(e) All applicable regulatory authorizations, approvals and permits for the operation of the Facility shall have been obtained, all conditions thereof shall have been satisfied, and shall be in full force and effect;

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

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

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

2.3 **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 achievement of Commercial Operation. From the achievement of Commercial Operation until the Commercial Operation Date, Seller shall provide quarterly progress reports. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Subject to Section 4.5, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement. The Parties acknowledge and agree that Seller has no obligation to sell or deliver Product to Buyer prior to the commencement of the Delivery Term, and that Seller may market, sell and/or deliver Product from the Facility prior to the commencement of the Delivery Term to third parties.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Facility.

3.3 **Compensation.**

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Delivered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day Ahead price for each Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product amounts in excess of the Guaranteed Capacity multiplied by the Settlement Interval, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

(d) Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period; *provided, however*, that Buyer shall pay for the amount of Delivered Energy or Deemed Delivery Energy generated by the Facility that is not subject to any Curtailment Order during any Curtailment Period in the event that a Curtailment Order is for less than the total capacity and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price.

(e) 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) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller, as Seller’s sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

3.4 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. In addition to its other obligations under this Agreement, Seller shall take such other commercially reasonable actions requested by Buyer that can be undertaken by Seller without cost or economic detriment to Seller to minimize charges and imbalances associated with Imbalance Energy; *provided, however*, that Seller shall not be responsible for any costs, charges or penalties arising from any Seller curtailments undertaken pursuant to Section 4.5(c). Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Except for penalties arising from Seller’s failure to comply with this Agreement or the CAISO Tariff,

Buyer shall be responsible for all CAISO costs and charges, including costs and charges related to Imbalance Energy, and to receive all CAISO revenues and credits, including revenues related to Positive Imbalance Energy related to the Delivered Energy.

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

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated 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 receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7 **Intentionally Omitted.**

3.8 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to obtain and maintain Full Capacity Deliverability Status for the Facility from CAISO

and shall perform all actions necessary to ensure that the Facility provides Resource Adequacy Benefits to Seller. Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

(c) Commencing on the RA Guarantee Date and throughout the Delivery Term, in each month, Seller shall pay to Buyer an amount (the “**RA Deficit Payments**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the current price for CPM Capacity as listed in Section 43.7.1 of the CAISO Tariff or its equivalent successor (the “**Multiplier**”), expressed in \$/kW-month. Should the price for CPM Capacity cease to be published by CAISO and no equivalent successor is published, the Multiplier shall be equal to the last price for CPM Capacity listed in the CAISO Tariff and escalated by two percent (2%) every twelve (12) months thereafter. In any event, the Multiplier may not exceed \$120/kW-year. The Parties acknowledge and agree that the payment of any RA Deficit Payments pursuant to this Section 3.8(c) shall be deemed to satisfy Seller’s obligation pursuant to Section 3.8(b).

3.9 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

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

3.11 **California Renewables Portfolio Standard.** 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.

3.12 **Compliance Expenditure Cap.** If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in Sections 3.12(a), (b) and (c), then Seller’s required out-of-pocket expenses are limited to one percent (1%) of the expected annual Facility revenues, but not less than One Hundred Thousand Dollars (\$100,000) in the aggregate each Contract Year and One Million Dollars (\$1,000,000) in

the aggregate over all Contract Years (“**Compliance Expenditure Cap**”) between the Effective Date and the last day of the Delivery Term:

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller’s violation of applicable regulatory requirements. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

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

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

4.3 **Scheduling Coordinator Responsibilities.**

(a) Buyer as Scheduling Coordinator for the Facility during the Delivery Term. During the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the commencement of the Delivery Term, Seller shall take all actions and execute and deliver to Buyer and CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the commencement of the Delivery Term. Seller is responsible for and shall pay Buyer an amount equal to the costs (including the costs of Buyer employees or agents) incurred by Buyer, as determined in Buyer's sole discretion, as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator including the costs associated with the registration of the Facility with CAISO, and the installation, configuration, and testing of all equipment and software necessary for Buyer to act as Scheduling Coordinator or to Schedule the Generating Facility ("**SC Set-Up Fee**"); *provided*, that the SC Set-up Fee shall not exceed Fifty Thousand Dollars (\$50,000). During the Delivery Term, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyer's best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to,

forecast data, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as provided below, Buyer shall be responsible for all CAISO costs (including scheduling and forecasting fees, Imbalance Energy charges, penalties and other charges) and shall be entitled to all CAISO revenues (including Imbalance Energy and other credits and payments) in each case, associated with Delivered Energy, except to the extent (i) such CAISO costs are incurred as a consequence of the Facility not being available, (ii) the Seller not notifying CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (iii) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO, Buyer Curtailment, or Scheduling Coordinator dispatch instructions and (iv) Negative LMP Costs incurred as a consequence of Seller's failure to use commercially reasonable efforts as required under Section 4.5(c). The Parties agree that any Availability Incentive Payments under CAISO Tariff Section 40.9 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity under CAISO Tariff Section 40.9 are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes requested by Seller.

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

(g) Master Data File and Resource Data Template. Seller shall provide the data to CAISO (and to Buyer) that is required for CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Seller to provide Notice to Buyer of any subsequent modifications (or need to modify) CAISO's Master Data File and Resource Data Template (or successor data systems).

4.4 **Forecasting.** Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use 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. No less than forty-five (45) days before (i) the first day of the Delivery Term and (ii) the beginning of every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be

liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts of Available Capacity.

Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) CAISO Tariff Requirements.

Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Dispatch Down/Curtailment

(a) General.

Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K.

(b) Buyer Curtailment.

Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price.

(c) Seller Curtailment.

Seller shall use commercially reasonable efforts to curtail deliveries of Energy from the Facility when Negative LMP prices are below -\$30/MWh. Buyer may adjust such Negative LMP curtailment price on ten (10) days' Notice to Seller. For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment and a Buyer Curtailment Period and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply.

If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment

Order.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(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 Order 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 6.2.

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 (“**Expected Energy**”). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods, and Buyer Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer.

4.8 **Financial Statements.** In the event a Guaranty is provided as Development or Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared

in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available 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.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation 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 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be

entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Energy produced at the Facility using a commercially available, CAISO revenue-grade metering system, using a CAISO-approved methodology. Such meter shall be installed on the low side or the high side of the Seller's transformer at Seller's determination 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 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.

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

(a) Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Product produced and the quantity of Product delivered, and CAISO prices at the Delivery Point for each Settlement Interval; (b) access to any records, including invoices or

settlement data from CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

(b) Buyer, as Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or 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 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any

required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount of \$60/kW within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the amount of such Daily Delay Damages within five (5) Business Days. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. If 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, Seller shall have five (5) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer within ten (10) days of the Commercial Operation Date. If the Performance Security is not in the form of cash or letter of credit, it shall be substantially in the form set forth in Exhibit E. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If 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, Seller shall have five (5) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Performance Security.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) 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 10 FORCE MAJEURE

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of

public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions 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; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Period; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) a Buyer Curtailment Period, or (ix) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

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

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming

Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(b).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3, and except for Seller’s failure to comply with a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, the exclusive remedy for which is provided in Section 4.5(d)) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

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

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

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-

Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 **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, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 3.8, SECTION 4.7 AND SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, 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 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other 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 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.

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

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

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

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

ARTICLE 14 ASSIGNMENT

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

delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment by 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 15.1, a Lender as collateral, *provided however*, that in the case of (a) or (b), 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. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 **Permitted Assignment by Buyer.** 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 15.2(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 good faith, 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 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15 LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such

Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

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

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

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that 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) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16 DISPUTE RESOLUTION

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

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17 INDEMNIFICATION

17.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all 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 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there

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

ARTICLE 18 INSURANCE

18.1 Insurance.

(a) General 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 an annual aggregate of not less than Two Million Dollars (\$2,000,000), 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) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

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

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date,

construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance 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. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

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

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1 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.

19.2 **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.

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

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, 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 19 to the same extent as if it were a Party.

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

ARTICLE 20 MISCELLANEOUS

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

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer;

provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy 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).

20.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, 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).

20.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

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

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

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members in connection with this Agreement.

20.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: RE Mustang 4

APN: All or a portion of APN 024-260-004, 024-260-010, 024-260-011, 024-260-016, and 024-260-018

County: Kings County

Guaranteed Capacity: 30 MW AC, measured at the Delivery Point

P-node/Delivery Point: The PNode designated by CAISO for the Facility at the 230kV breaker position of the Facility's 230 kV switching station connecting to PG&E's Gates – Gregg 230 kV and Gates – McCall 230 kV Transmission Lines, which PNode designation will be provided to Buyer by Seller once available from CAISO.

Additional Information: The Site is located southwest of the Route 198 & 25th Avenue intersection and north of Avenal Cutoff Road, Lemoore, Kings County CA, in PG&E service territory

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by March 31, 2016, (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, including the physical movement of soil at the Facility, grading, grubbing, site access preparation or vegetation removal, at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility (“**Construction Start**”). On the date of the beginning of construction (the “**Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily 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 conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement, and (iii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) January 1, 2018 or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by January 1, 2018 (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after 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 for each day the Facility 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 until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice.
3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon Notice to Seller.
4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation 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 March 31, 2016;
 - 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 January 1, 2018; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.
5. provided, however, that any cumulative extensions granted pursuant to the foregoing clauses (a), (b) and (c) shall not exceed one hundred twenty (120) days (“**Development Cure Period**”). **Failure to Reach Guaranteed Capacity**. If, at 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 ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades 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 One Hundred Thousand Dollars (\$100,000) 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 Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Greg Brehm, Director of Power Resources
Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

SELLER:

General Counsel's Office
RE Mustang 4 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 E
FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and RE Mustang 4 LLC, a Delaware limited liability company (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2014.
- B. Guarantor is entering into this Guaranty as [**Development Security**][**Performance Security**] to secure Seller’s obligations under the PPA, as required by Section [8.7][8.8] of the PPA.¹
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of [**any Daily Delay Damages and any Commercial Operation Delay Damages**][**any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages**]), as and when required pursuant to the terms of the PPA strictly in accordance therewith (collectively, the “Guaranteed Amount”); provided that, other than with respect to the Enforcement Expenses, Guarantor’s aggregate liability hereunder shall in no circumstances exceed [**\$60/kW**][**\$180/kW**] (the “Guaranty Cap”). This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Guarantor further agrees to pay any and all expenses (including the reasonable fees and

¹ NTD: Throughout this form of guaranty, where alternative language is provided in [**bold brackets**], the first alternative should be used for a guaranty provided as Development Security pursuant to Section 8.7 of the PPA and the second alternative should be used for a guaranty provided as Performance Security pursuant to Section 8.8 of the PPA.

disbursements of counsel) that may be paid or incurred by Buyer in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Amount and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty (any such expenses, the “Enforcement Expenses”); it being understood and agreed that the amount of any such Enforcement Expenses shall not be included in calculating Guarantor’s liability hereunder for purposes of the Guaranty Cap.

2. Demand Notice. If Seller has not timely paid any Guaranteed Amount as required pursuant to the PPA after written notice of such failure to Seller (the “Demand Notice”) and the expiration of five (5) Business Days after delivery of such Demand Notice, then Guarantor shall, within two (2) Business Days, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount [and not to any other amount payable by Seller to Buyer pursuant to the PPA].² This Guaranty shall continue in full force and effect from the Effective Date until [**the earlier to occur of (i) Seller’s delivery of the Performance Security pursuant to Section 8.8 of the PPA and (ii) sixty (60) days after termination of the PPA**] [**both (i) the Delivery Term under the PPA has expired or terminated early and (ii) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller)**]. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for any reason, including the following:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

² The bracketed language to be included in the Guaranty provided as Development Security.

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the notice requirement in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the payment in full of all Guaranteed Amounts, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the

execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, and (f) Guarantor has a tangible net worth greater than \$[_____].

8. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Greg Brehm, Director of Power
Resources
Fax: 415.459.8095

If delivered to Guarantor, to it at

[_____]
Attn: [_____]
Fax: [_____]

9. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

10. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies

the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY

REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

MARIN CLEAN ENERGY

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

“**Replacement Green Attributes**” means Renewable Energy Credits and Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“**Replacement Green Attributes Value**” means the product of (a) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes multiplied by (b) the amount of Replacement Green Attributes, expressed in MWh.

“Replacement Capacity Attributes” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

“Replacement Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all Replacement Green Attributes.

No payment shall be due if the calculation of $(A - B)$ or $(C - D)$ yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

SCHEDULE F-1

EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
JAN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.8	9.8	13.4	15.1	14.6	14.0	13.9	13.1	10.6	3.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
FEB	0.0	0.0	0.0	0.0	0.0	0.0	0.0	4.6	16.3	20.5	20.6	19.0	18.0	19.5	19.3	17.5	10.5	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
MAR	0.0	0.0	0.0	0.0	0.0	0.0	1.9	16.4	24.6	25.6	25.2	24.4	24.3	24.0	24.5	23.2	17.7	4.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
APR	0.0	0.0	0.0	0.0	0.0	0.2	11.8	24.5	26.1	26.5	26.7	26.5	26.0	26.5	25.5	25.8	22.2	10.9	0.2	0.0	0.0	0.0	0.0	0.0	0.0
MAY	0.0	0.0	0.0	0.0	0.0	3.0	18.4	25.7	27.7	28.3	28.6	28.7	29.0	28.8	28.0	27.0	23.4	14.8	3.2	0.0	0.0	0.0	0.0	0.0	0.0
JUN	0.0	0.0	0.0	0.0	0.0	5.4	20.7	26.3	28.5	29.0	29.1	28.9	29.1	28.7	28.9	28.8	26.6	19.6	4.4	0.0	0.0	0.0	0.0	0.0	0.0
JUL	0.0	0.0	0.0	0.0	0.0	3.0	18.9	26.6	29.3	29.2	29.5	28.5	29.2	28.8	28.8	28.2	25.4	18.5	5.0	0.0	0.0	0.0	0.0	0.0	0.0
AUG	0.0	0.0	0.0	0.0	0.0	0.3	13.3	24.4	28.0	28.7	28.5	28.0	28.1	28.5	28.7	28.0	24.5	14.1	1.1	0.0	0.0	0.0	0.0	0.0	0.0
SEP	0.0	0.0	0.0	0.0	0.0	0.0	7.1	22.5	27.1	27.4	26.9	26.0	26.3	26.5	26.4	24.1	18.6	3.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OCT	0.0	0.0	0.0	0.0	0.0	0.0	1.6	16.2	21.9	22.7	22.1	21.6	22.2	22.4	23.0	19.2	7.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NOV	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.5	15.3	16.8	16.9	16.3	17.0	17.4	16.2	12.2	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DEC	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.5	10.3	13.6	13.7	13.1	13.2	13.4	13.1	9.4	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Contract Year	Expected Energy (MWh)
1 (Commercial Operation Date through December 31)	Year 1 EE
2	84,404
3	83,982
4	83,562
5	83,144
6	82,729
7	82,315
8	81,903
9	81,494
10	81,087
11	80,681
12	80,278
13	79,876
14	79,477
15	79,080
16 (January 1 until anniversary of Commercial Operation Date)	Year 16 EE

“**Year 1 EE**” means the Expected Energy for Contract Year 1, based on the actual Commercial Operation Date of the Facility, calculated on the basis of the following formula:

$$\text{Year 1 EE} = 84,404 \text{ MWh} * \text{Annual Adjustment (as defined below)}$$

“**Year 16 EE**” means the Expected Energy for Contract Year 16, based on the actual anniversary of the Commercial Operation Date of the Facility, calculated on the basis of the following formula:

$$\text{Year 16 EE} = 78,684 \text{ MWh} * (1 - \text{Annual Adjustment})$$

“**Annual Adjustment**” means the percentage, expressed as a decimal, of annual production for Contract Year 1, based on the actual Commercial Operation Date of the Facility and the Annual

Production Breakdown table below.

Annual Production Breakdown

Month	Days in Month	Percent Annual Production (PAP) in Month
January	31	4.01%
February	28	5.51%
March	31	8.65%
April	30	9.93%
May	31	11.55%
June	30	11.86%
July	31	12.10%
August	31	11.18%
September	30	9.32%
October	31	7.34%
November	30	4.82%
December	31	3.73%

Sample Calculation:

Assuming the Commercial Operation Date for the Facility is March 15, 2018, the Year 1 EE and Year 16 EE would be calculated as follows:

Annual Adjustment = (March PAP * Days Operational in March / Total Days in March) + April PAP + May PAP + June PAP + July PAP + August PAP + September PAP + October PAP + November PAP + December PAP

$$\text{Annual Adjustment} = (8.65\% * 16/31) + 9.93\% + 11.55\% + 11.86\% + 12.10\% + 11.18\% + 9.32\% + 7.34\% + 4.82\% + 3.73\% = 86.29\%$$

$$\text{Year 1 EE} = 84,404 \text{ MWh} * 86.29\% = 72,832 \text{ MWh}$$

$$\text{Year 16 EE} = 78,684 \text{ MWh} * (1 - 86.29\%) = 10,788 \text{ MWh}$$

EXHIBIT G

[Reserved.]

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

After the Effective Date, 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, start-up, and operation 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. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

Once the project achieves Commercial Operation, Seller's Quarterly Milestone Progress Reporting Form must include the following items:

1. Executive Summary.
2. Description of any planned outages or maintenance activities.
3. Description of any forced outages.
4. Actual CAISO metered energy production for the previous calendar quarter.
6. Summary of expected activities during the current calendar quarter.
7. List of issues that could potentially impact Seller's delivery obligations under the PPA and Seller's expected mitigation measures.
8. Any changes to the Facility or site.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of the Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between RE Mustang 4 LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Seller has successfully completed 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 at the Delivery Point, as adjusted for ambient conditions on the date of the performance test, which shall not be less than twenty-seven (27) MW;
2. Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point and that such equipment is capable of generating energy in accordance with the manufacturer’s specifications (“**Initial Mechanical Completion**”);
3. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
4. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
5. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
6. The Facility is operational and interconnected with the CAISO Grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities for the Facility.

For purposes of Section 4 above, “**Initial Commissioning Completion**” means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer’s specifications.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between RE Mustang 4 LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification (“**Certification**”) of the Construction Start Date is delivered by RE MUSTANG LLC 4 (“**Seller**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility was executed on _____;
2. the Limited Notice to Proceed with the construction of the Facility was issued on _____ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

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

RE MUSTANG 4 LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

Buyer Bid Curtailment and Buyer Curtailment Orders

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders, which in each case must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are actually based on physical characteristics of the resource.

- Nameplate capacity of the Project: 30 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 5 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 20
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 21
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 5 minutes
- Ramp Rate: 3 MW/minute
- Increments of Contract Capacity that can be curtailed: One (1) MW

Illustrative Example:

Time	Buyer's Order	Seller's Action
10:00	Curtailment Order (Curtail to 0 MW at 10:10)	Seller implementing order and ramping down from 30 MW (10 minutes)

10:10		At 0 MW
10:10 – 10:15		At 0 MW (minimum down time of 5 min)
10:15	Seller to return to Schedule (24 MW per the Schedule, at 10:23)	Seller implementing order and ramping up
10:23		At Schedule (24 MW, per the Schedule)



October 2, 2014

TO: Marin Clean Energy Board
FROM: Elizabeth Kelly, Legal Director
RE: Regulatory Update for September 2014 (Agenda Item #9)

Dear Board Members:

Executive Summary of Regulatory Affairs for September 2014

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for September 2014 impacting community choice aggregation and MCE.

PG&E 2015 Energy Resource Recovery Account Application (ERRA) (A.14-05-014)

On September 22, 2014, MCE served its Opening Brief in the PG&E ERRA proceeding. The brief argued on two basic points:

- 1. MCE Requests a Return to Customers of the Negative PCIA Balance.**
Based on prior CPUC decisions, the PCIA exit fee is not permitted to “go negative,” which indicates there can never be a situation in which a customer receives credit for the PCIA instead of paying for this exit fee on a monthly basis. This has resulted in PG&E holding on to a negative balance of the PCIA which PG&E has not applied to positive PCIA amounts. PG&E’s current negative balance is projected to exceed \$1 billion. This negative balance is currently being used to offset customers who departed PG&E bundled service before 2009. MCE is requesting that PG&E is directed to use this balance to offset PCIA charges for CCA customers who departed PG&E bundled service after 2009.
- 2. MCE Requests a Correction to PG&E’s Methodology for “Vintaging” Customers for Purposes of the Power Charge Indifference Adjustment (PCIA).**

When customers depart PG&E bundled service, they are assigned “vintages” that signify their departure date. PCIA obligations for individual customers are calculated based upon a customer’s vintage.

For existing buildings, PG&E’s current practice is to assign vintages based upon each individual customer’s account creation. Therefore, if an MCE customer

moves into a new house, some customers are receiving a vintage that is tied to the date they opened their new PG&E account. In practice, this means that someone who has been an MCE customer since 2010 could move into a new house and be assigned a 2014 vintage. MCE believes this practice is contrary to Commission precedent and has requested the Commission to direct PG&E to assign vintages for individual CCA customers based upon the date the CCA became active in a particular service territory, known as the “phase-in” date.

For new buildings, PG&E assigns a vintage based upon the account creation of the new building. For example, a new house that is being built would have a 2014 vintage. Given that CCAs are the default service providers, it is not reasonable to allow PG&E to assign any vintage to these CCA customers because there was no anticipated need to serve those customers once the CCA launched. Therefore, MCE has requested the Commission to direct PG&E to refrain from assigning vintages to new buildings, which would result in lower monthly charges to CCA customers.

Demand Response (DR) (R.13-09-011)

On September 8, 2014, MCE filed its Reply Brief on cost allocation issues related to DR in this proceeding. MCE responded to other parties’ arguments and asserted (1) the status quo should not be preserved, (2) costs should not be allocated to all ratepayers purely due to “universal benefits” attributable to any type of DR program, (3) CPUC’s lack of jurisdiction over CCAs and ESPs should not be conflated with the Commission’s obligation to allocate IOU program costs prudently, (4) MCE’s double payment concerns are material and not “theoretical” in nature, and (5) arguments for Cost Allocation Mechanism (“CAM”) or CAM-like cost recovery are not relevant to DR program costs.

Residential Ratemaking Proceeding (R.12-06-013)

On September 15, 2014, MCE filed Intervenor testimony in the Residential Ratemaking proceeding. In its testimony, MCE raised concerns about the IOU’s continued use of zero minimum bill limiter adjustments. The zero minimum bill limiter adjustments mean that any credits on a customer’s bill, such as a low-income CARE credit, cannot exceed the PG&E charges on a customer’s bill. While this limiter does not pose an issue for PG&E bundled customers whose credits are offset against PG&E distribution and generation charges, CCA customers have been negatively impacted since the PG&E portion of is only the distribution line item. Specifically, these zero minimum bill limiter adjustments deny CCA customers from receiving the full value of credits that they are eligible for, such as CARE credits.

In its testimony, MCE also called attention to the lack of specific detail regarding how the IOUs will educate CCA customers on the upcoming, significant rate changes that will result from this proceeding and AB 327, the residential rate reform bill. MCE argues for the Commission to require the IOUs to work alongside CCAs to devise acceptable, competitively neutral messaging about these upcoming rate changes.

Rulemaking for the Development of Distribution Resource Plans (R.14-08-013)

On August 14, 2014, the Commission launched a new rulemaking proceeding regarding the development of investor-owned utility (IOU) distribution resource plans (DRPs). This proceeding is a result of new Public Utilities Code Section 769. The IOU distribution resource plans are to address “distributed resources” which are defined as: “distributed renewable generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies.” (Section 769(a).)

MCE responded to the Order Instituting Rulemaking; this response can be found in the Regulatory Packet. In that response, MCE set forth its objective in the proceeding:

MCE’s primary interest in the Rulemaking is to ensure that the Commission – and the DRPs authorized by the Commission – facilitates the widespread deployment of distributed resources on a competitively neutral basis by load serving entities (“LSEs”) such as community choice aggregators (“CCAs”), local governments, third parties and other participants.

In this proceeding, MCE seeks to ensure that the DERs result in reduced barriers to entry and competitive neutrality in the deployment of distributed resources. In order to achieve this, MCE has asked the Commission to address billing, data and interconnection issues.

MCE presented at a CPUC workshop on the Distributed Resource Plans. MCE will be involved to ensure that CCAs maintain their autonomy regarding generation-related resources and to ensure that the distribution resource plans are not anti-competitive or result in cross-subsidization.



October 2, 2014

TO: Marin Clean Energy Board
FROM: Shalini Swaroop, Regulatory Counsel
RE: MCE Legislative Executive Summary (Agenda Item #9)

Dear Board Members:

Assembly Bill 2145 (Bradford) – Community Choice Aggregation

In its final version, AB 2145 contained three main provisions:

1. A contiguous three-county limitation for CCAs, unless a non-qualifying jurisdiction had passed an ordinance to join or form a CCA before January 1, 2015.
2. A CCA is required to provide reference to a current rate comparison between the CCA and utility rates on each opt-out notice, including rates specific to that customer's rate schedule.
3. The bill allows the investor-owned utility to file a complaint against a CCA at the California Public Utilities Commission.

Current Status:

AB 2145 was not brought to a final vote on the Senate Floor by the author. Therefore, the bill did not move forward from the Senate and the bill "died." 2014 was the second year in a two-year legislative cycle, so the bill is not eligible to be raised again in the next legislative cycle.

Assembly Bill 2188 (Muratsuchi) – Solar Permitting

Background:

AB 2188 is intended to promote and encourage the use of solar energy systems by requiring a streamlined permitting process for small rooftop solar systems in California. The bill is aligned with MCE's mission to promote the development and use of a wide range of renewable energy sources, including but not limited to solar and wind energy production at competitive rates for customers. On March 3, 2014, MCE issued a letter in support of AB 2188. The bill passed through the Assembly Floor on May 27, 2014.

Current Status:

AB 2188 passed in both the Senate and Assembly Floor, and the Governor signed it into law on September 4, 2014.

Senate Bill 1414 (Wolk) – Demand Response

Background:

SB 1414 would require: (1) the California Public Utilities Commission to establish demand response programs and tariffs of investor-owned utilities; and (2) all load-serving entities to maintain demand response resources. This legislation as currently drafted would enable the potential application of the Cost Allocation Mechanism to demand response programs.

Current Status:

The bill passed through the Assembly Floor on August 26, 2014 and was signed into law by the Governor on September 2, 2014.

Senate Bill 1139 (Hueso) – Requiring Certain Geothermal Procurement

Background:

SB 1139 requires each load serving entity in the state to procure geothermal resources constructed after January 1, 2015. This bill overly restricts procurement from all load serving entities and is opposed by a wide variety of stakeholders, including all investor-owned utilities and some geothermal providers. The bill is supported by a variety of labor organizations.

Current Status:

The bill passed through the Assembly Appropriations Committee and was not brought to a final vote on the Assembly Floor. Therefore, the bill did not move forward from the Assembly and the bill “died.” 2014 was the second year in a two-year legislative cycle, so the bill is not eligible to be raised again in the next legislative cycle.