



MCE Technical Committee Meeting
Friday, September 4, 2026
10:00 a.m.

1125 Tamalpais Avenue
San Rafael, CA 94901

2300 Clayton Road, Suite 1500
Concord, CA, 94520

Public comments may be made in person or remotely via the details below.

Remote Public Meeting Participation

Video Conference:

<https://us02web.zoom.us/j/82851037385?pwd=NTNsNXN4eXgvQ3AxNnp0UW5FSIkrUT09>

Phone: Dial (669) 900-9128, Meeting ID: 828 5103 7385, Passcode: 142534

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3672 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

The Technical Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1. Approval of 7.14.26 Meeting Minutes
 - C.2. Approval of EEI Master Agreement and Collateral Annex with J.P. Morgan

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Ventures Energy Corp.

6. MCE 2025 Power Source Disclosure Attestation (Discussion/Action)
7. Member Requests for Future Agenda Items (Discussion)
8. Committee & Staff Matters (Discussion)
9. Adjourn

DRAFT

MCE SPECIAL TECHNICAL COMMITTEE MEETING MINUTES
Tuesday, July 14, 2026
11:00 A.M.

Present: Stephanie Andre, City of Larkspur, joined at 11:10 a.m.
Dion Bailey, City of Hercules, Chair
John McCormick, City of Lafayette
Devin Murphy, City of Pinole
Charles Palmares, City of Vallejo, joined at 11:21 a.m.
Amanda Szakats, City of Pleasant Hill
Brianne Zorn, City of Martinez

**Staff
& Others:** Jesica Brooks, Lead Board Clerk and Executive Assistant
CB Hall, Director of Power Resources
Vicken Kasarjian, Acting CEO and COO
Tanya Lomas, Board Clerk
Stephen Mariani, Manager of Power Resources
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Associate
Justine Parmelee, VP of Internal Operations
Mike Rodriguez-Vargas, Internal Operations Assistant
Enyonam Senyo-Mensah, Manager of Internal Operations
Sabrinna Soldavini, VP of Policy
Jamie Tuckey, Chief Customer Officer

1. Roll Call

(Video [0:00:00](#))

Chair Bailey called the regular Technical Committee meeting to order at 11:00 a.m. with quorum established by roll call.

2. Board Announcements (Discussion)

(Video [0:00:53](#))

There were no comments.

3. Public Open Time (Discussion)

(Video [0:01:25](#))

Chair Bailey opened the public comment period and there were no comments.

4. Report from Chief Executive Officer (Discussion)

(Video [0:02:00](#))

Vicken Kasarjian, Acting CEO & COO, introduced this item.

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Chair Bailey opened the public comment period and there was a comment from member of the public Dan Segedin.

5. Consent Calendar (Discussion/Action)

(Video [0:13:18](#))

C.1 Approval of 6.5.26 Meeting Minutes

Chair Bailey opened the public comment period and there were no comments.

Action: It was M/S/C (Szakats/McCormick) to **Approve the Consent Calendar**. Motion carried by unanimous roll call vote. (Absent: Palmares).

6. Committee Process for Agenda Setting (Discussion/Action)

(Video [0:14:56](#))

Catalina Murphy, General Counsel, presented this item and addressed questions from Committee members.

Chair Bailey opened the public comment period and there were no comments.

Action: It was M/S/C (Szakats/McCormick) to **Approve Option 2, which is a less formal approach to adding items to technical committee agendas and have staff maintain a list of items requested for future meetings**. Motion carried by roll call vote. 5-Yays 2-Nos. (Nos: Murphy and Palmares). Note: This informal process changes the prior process that was passed at the May 1, 2026 meeting for adding items to an agenda for the Technical Committee. Under this Option 2, when the agenda item "*Member Requests for Future Agenda Items*" is up for discussion, the Committee will take Public Comment and then Committee Members will provide their list of future agenda items. Staff will maintain a list and provide that as a staff report to be included in future committee packets. This item is intended to be a discussion only item moving forward.

7. Proposed First Amendment to Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC (Discussion/Action)

(Video [0:43:13](#))

Stephen Mariani, Manager of Power Resources, presented this item and addressed questions from Committee members.

Chair Bailey opened the public comment period and there was a comment from member of the public, Dan Segedin.

Action: It was M/S/C (Murphy/Szakats) to **Authorize execution of the Renewable Power Purchase Agreement Amendment with Mulqueeney Wind Energy LLC**. Motion carried by unanimous roll call vote.

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8. Member Requests for Future Agenda Items* (Discussion/Action)

(Video [1:02:26](#))

Chair Bailey opened the floor for committee members to request future agenda items.

Director Andre would like to bring renewable energy targets for light green products to a future meeting. The committee was in agreement.

Chair Bailey opened the public comment period and there were no comments.

Note: No action was taken as the Committee implemented the new agenda setting process that was approved in Item 6 of this agenda.

9. Committee & Staff Matters (Discussion)

(Video [1:05:31](#))

There were no comments.

10. Adjournment

Chair Bailey adjourned the meeting at 12:06 p.m. to the next scheduled Technical Committee Meeting on August 7, 2026.

Dion Bailey, Chair

Attest:

Justine Parmelee, Secretary



September 4, 2026

TO: MCE Technical Committee

FROM: Stephen Mariani, Manager of Power Resources

RE: Approval of EEI Master Agreement and Collateral Annex with J.P. Morgan Ventures Energy Corp. (Agenda Item #05 C.2)

ATTACHMENTS:

- A. *Redacted* EEI Master Power Purchase and Sale Agreement Cover Sheet
- B. *Redacted* EEI Master Power Purchase and Sale Agreement Paragraph 10 to the Collateral Annex
- C. EEI Master Power Purchase and Sale Agreement Version 2.1 (modified 4/25/00)
- D. EEI Collateral Annex Version 1.0 (2/21/02)

Dear Technical Committee Members:

Summary:

MCE staff is recommending approval to enter into an Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement and associated Collateral Annex (collectively, the "Master Agreement") with J.P. Morgan Ventures Energy Corporation ("JPMVEC"), which would enable MCE and JPMVEC to transact for a variety of energy products, including but not limited to CAISO energy hedges. MCE and JPMVEC have reached commercial agreement on the Master Agreement, and the Master Agreement has received internal MCE staff approvals.

Future transactions between MCE and JPMVEC for any energy products under this Master Agreement would require the execution of a subsequent written Confirmation. Such written Confirmation would be subject to the terms of this Master Agreement and any additional terms included in the Confirmation setting forth the applicable products, prices, volumes, delivery periods, and other transaction-specific terms. The Master Agreement, in and of itself, has no associated dollar value and does not represent a commitment to any specific transaction.

The key commercial provisions of the Master Agreement are described in the next section.

Master Agreement Key Provisions:

- Counterparty: J.P. Morgan Ventures Energy Corporation
- Credit Protections/Credit Assurances

- Effective Term: Master Agreement remains in place unless terminated following an Event of Default or, if no transactions are outstanding, by either Party upon 30 days' prior written notice
- Collateral Provisions
- Contract Value: Not applicable – the Master Agreement enables future transactions, but is not itself a transaction.

Fiscal Impacts:

The Master Agreement has no independent contract value and therefore has no impact on the current Fiscal Year Ending (FYE) 2027 budget. Future transactions under subsequent Confirmations will be subject to the applicable approval authorities and processes under Resolution 2020-04 and Resolution 2026-01, unless such authorities and processes are revised or rescinded by subsequent Board resolution.

Recommendation:

MCE staff is recommending that the Technical Committee approve the execution of the Master Agreement between J.P. Morgan Ventures Energy Corporation and MCE.

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name: J.P. Morgan Ventures Energy Corporation
 (“**Party A**”)

All Notices:

[REDACTED]

[REDACTED]

Name: Marin Clean Energy, a California joint powers authority (“**Party B**”)

All Notices:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Contract Administration
Phone: (415) 464-6010
Email: contractadmin@mcecleanenergy.org
Duns: 829602338
Federal Tax ID Number: 26-4300997

Invoices:

[REDACTED]

Invoices:

Attn: Power Settlements and Analytics
Phone: (415) 464-6684
Email: Settlements@mcecleanenergy.org

Scheduling:

[REDACTED]

Scheduling:

Attn: ZGlobal
Phone: (916) 458-4080
Email: dascheduler@zglobal.biz

Confirmations:

[REDACTED]

Confirmations:

Attn: Power Resources
Address: same as above
Phone: (415) 464-6010
Email: procurement@mcecleanenergy.org

Payments:

[REDACTED]

Payments:

Attn: Power Settlements and Analytics
Phone: (415) 464-6010
Email: settlements@mcecleanenergy.org

Wire Transfer:

[REDACTED]

Wire Transfer:

BNK: [REDACTED]
[REDACTED]

Credit and Collections:

[REDACTED]

Credit and Collections:

Attn: Finance
Phone: (415) 464-6667
Email: finance@mcecleanenergy.org

**With additional Notices of an Event of Default
to:**



**With additional Notices of an Event of Default
to:**

Attn: Legal
Phone: (415) 464-6010
Email: contracts@mcecleanenergy.org

With a copy to:

Hall Energy Law PC
Attn: Stephen Hall
Phone: (503) 313-0755
Email: steve@hallenergylaw.com

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

Party A Tariff: Market Based Rate Tariff No. 2 Dated: 1/20/2025 (Pending) Docket Number: ER17-1329

Party B Tariff: N/A

Article Two

Transaction Terms and Conditions

☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☒ Cross Default for Party A:

☐ Party A:

Cross Default Amount:

☒ Other Entity:

Cross Default Amount:

☒ Cross Default for Party B:

☒ Party B:

Cross Default Amount:

☐ Other Entity:

Cross Default Amount \$ _____

5.6 Closeout Setoff:

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

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

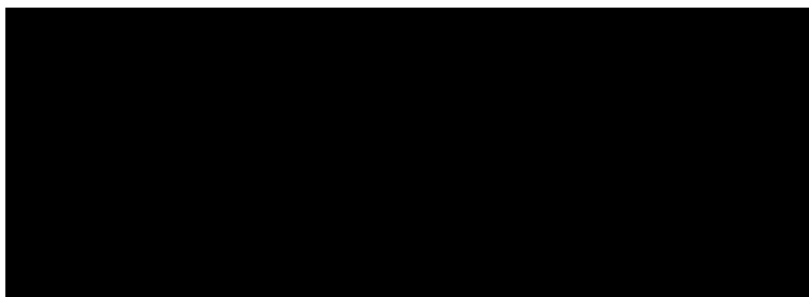
☐ Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

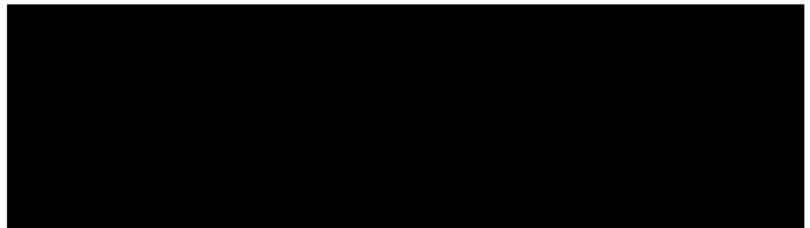




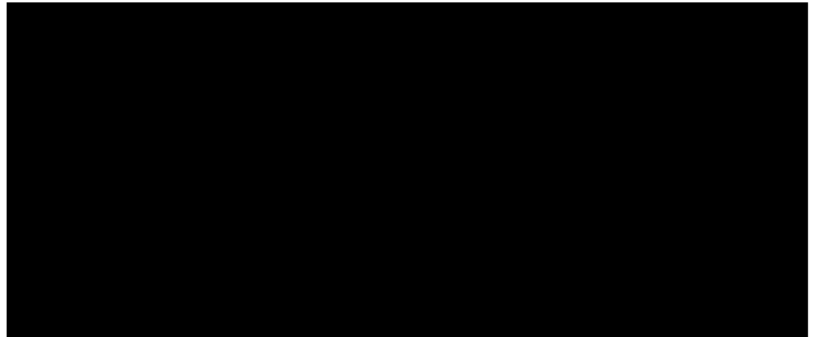
(b) Credit Assurances:



(c) Collateral Threshold:



(d) Downgrade Event:

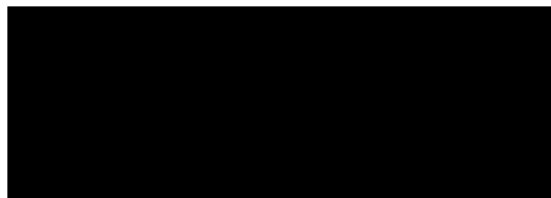


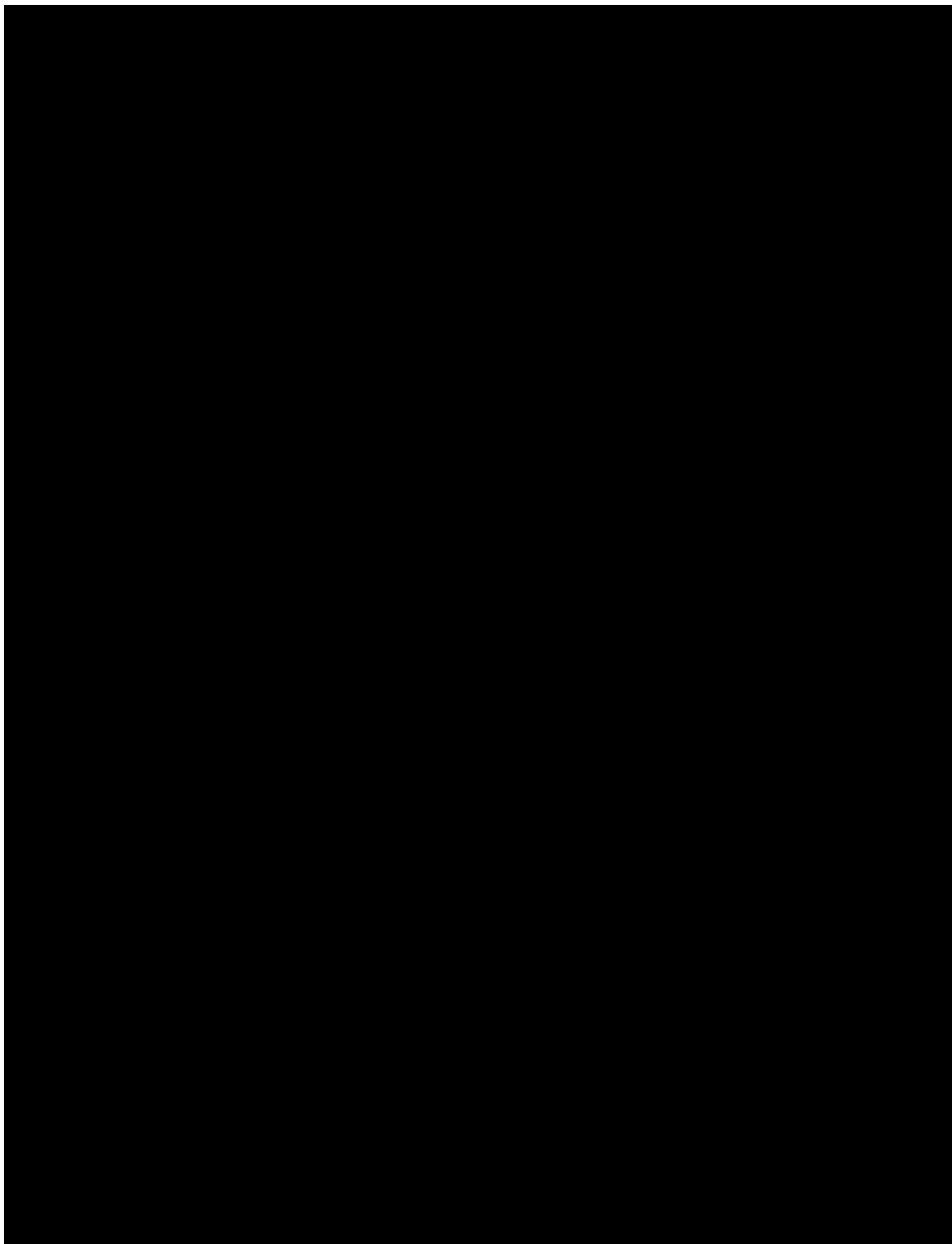
(e) Guarantor for Party B: N/A

Guarantee Amount:



8.2 Party B Credit Protection:





Article Ten

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☒ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

ARTICLE ONE: GENERAL DEFINITIONS.

1. “**Affiliate**”: Section 1.1 is amended by adding the following sentence at the end of the definition:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party B, the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2. “**Confirmation**”: Section 1.9 is amended by deleting the reference to “Section 2.3” and replacing it with a reference to “Section 2.1”.
3. “**Credit Rating**”: Section 1.12 is amended by deleting the definition of “Credit Rating” and replacing it with the following: ““Credit Rating” shall have the meaning ascribed to it in Paragraph 10 to the Collateral Annex.”
4. A new Section 1.22A is added as follows:

[REDACTED]

5. “**Force Majeure**”: Section 1.23 is amended by
 - (i) deleting the first sentence of the definition of “Force Majeure” and replacing it with the following: ““**Force Majeure**” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided and shall include, but is not limited to, physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, and severe weather related events materially affecting an entire geographic region.”;
 - (ii) inserting the following text after the word “hereunder”: “or Buyer’s ability to obtain the Product at a more advantageous price or under more advantageous terms or conditions”; and
 - (iii) inserting the word “two” before the phrase “foregoing factors.”
6. “**Gains**”: Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
7. “**Interest Rate**”: Section 1.26 is deleted in its entirety and replaced with the following:

““**Interest Rate**” means, for any date, the lesser of (a) the rate published as the Secured Overnight Financing Rate (SOFR) that appears on Bloomberg Page SOFRRATE for such day, or as published in another source mutually agreed by the Parties, and (b) the maximum rate permitted by applicable law.”
8. A new Section 1.26A is added as follows:

“1.26A **Joint Powers Agreement**” means the Joint Powers Agreement, effective as of December 19, 2008, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

9. **“Letters of Credit”**: Section 1.27 is superseded. See Paragraph 10 to the Collateral Annex.
10. **“Losses”**: Section 1.28 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
11. **“Moody’s”**: Section 1.30 is amended by deleting “Investor Services” and replacing it with “Investors Service”.
12. **“Potential Event of Default”**: Section 1.46 is amended by deleting the section in its entirety.
13. **“Recording”**: Section 1.50 is amended by deleting the reference to section “2.4” and replacing it with “2.5.”
14. **“Replacement Price”**: Section 1.51 is amended by adding “for delivery” immediately before “at the Delivery Point” in the second line, and replacing “at Buyer’s option” with “absent a purchase for all or any portion of the Product not delivered by Seller” in the fifth line.
15. **“S&P”**: Section 1.52 is amended by deleting “the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.)” and replacing it with the following: “S&P Global Ratings, a division of S&P Global, Inc.”
16. **“Sales Price”** Section 1.53 is amended by:
 - (i) deleting the phrase “at the Delivery Point” from the second line; and
 - (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale for all or any portion of the Product not delivered by Seller”; and
 - (iii) inserting after the word “liability” in the ninth line the following: “; provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”
17. **“Settlement Amount”**: Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”
18. **“Transaction”**: Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to.”
19. A new Section 1.61 is added as follows:

“1.61 **Western Systems Power Pool Agreement**” means the terms and conditions of the Western Systems Power Pool Agreement, effective as of October 31, 2025, along with any schedules thereto, as amended from time to time.”

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.

1. Section 2.1 is deleted in its entirety and replaced with the following:

“A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties (“Confirmation”). Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.”

2. The following is added as a separate second paragraph of Section 2.2:

“Party A and Party B confirm that this Master Agreement shall supersede and replace the following prior power purchase and sale agreements between the Parties hereto with respect to the subject matter hereof:
_____ (if blank, then “none”).”

3. Section 2.2 is further amended by deleting “accepted in accordance with Section 2.3.”

4. Section 2.3 is deleted in its entirety and replaced with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

5. Section 2.4 is amended by deleting the words “either orally or” in the seventh line and adding “a” before the word “writing”.

6. Section 2.5 is amended by:

- (i) deleting from the beginning of the first sentence the phrase “Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each” and replacing it with the word “Each”;
- (ii) inserting “and instant messages” after “conversations” in line three;
- (iii) deleting the second sentence in its entirety and replacing it with the following:

“Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers, employees and agents of such monitoring or recording and to obtain any necessary consent of such officers, employees and agents; provided, further that the Party responsible for obtaining the consent of its officers, employees and agents to such recordings shall indemnify, defend and hold the other Party harmless from any and all losses, liabilities, claims, damages, judgments, costs and expenses, including but not limited to reasonably attorney’s fees and costs of court, arising from or out of such Party’s failure to obtain the consent of its officers, employees and agents to such recordings.”; and

- (iv) deleting the last two sentences thereof in their entirety.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES.

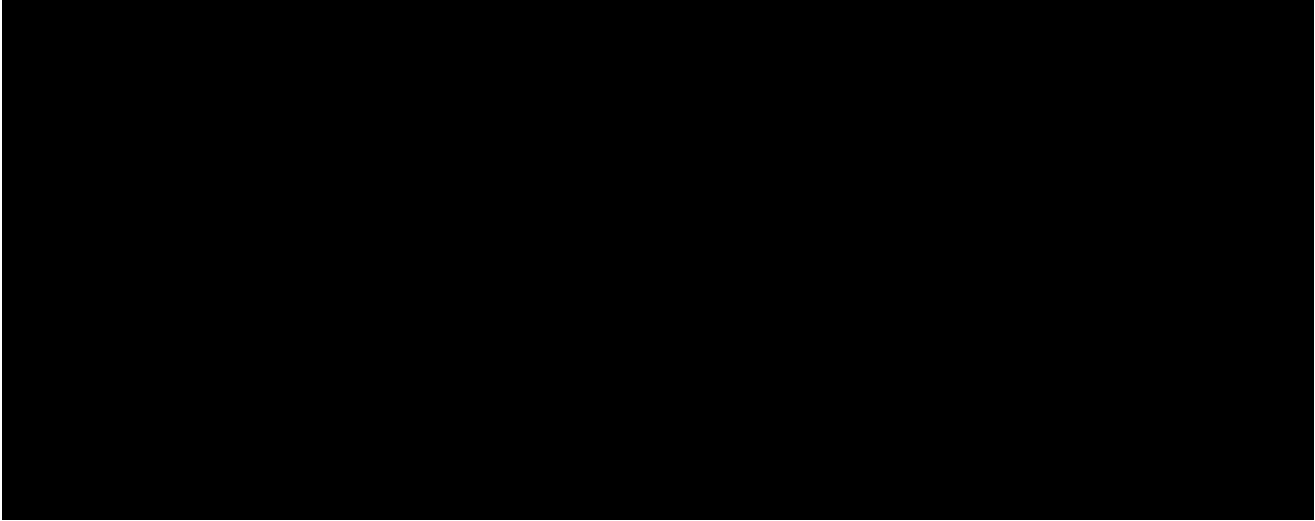
1. Section 3.2 is amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

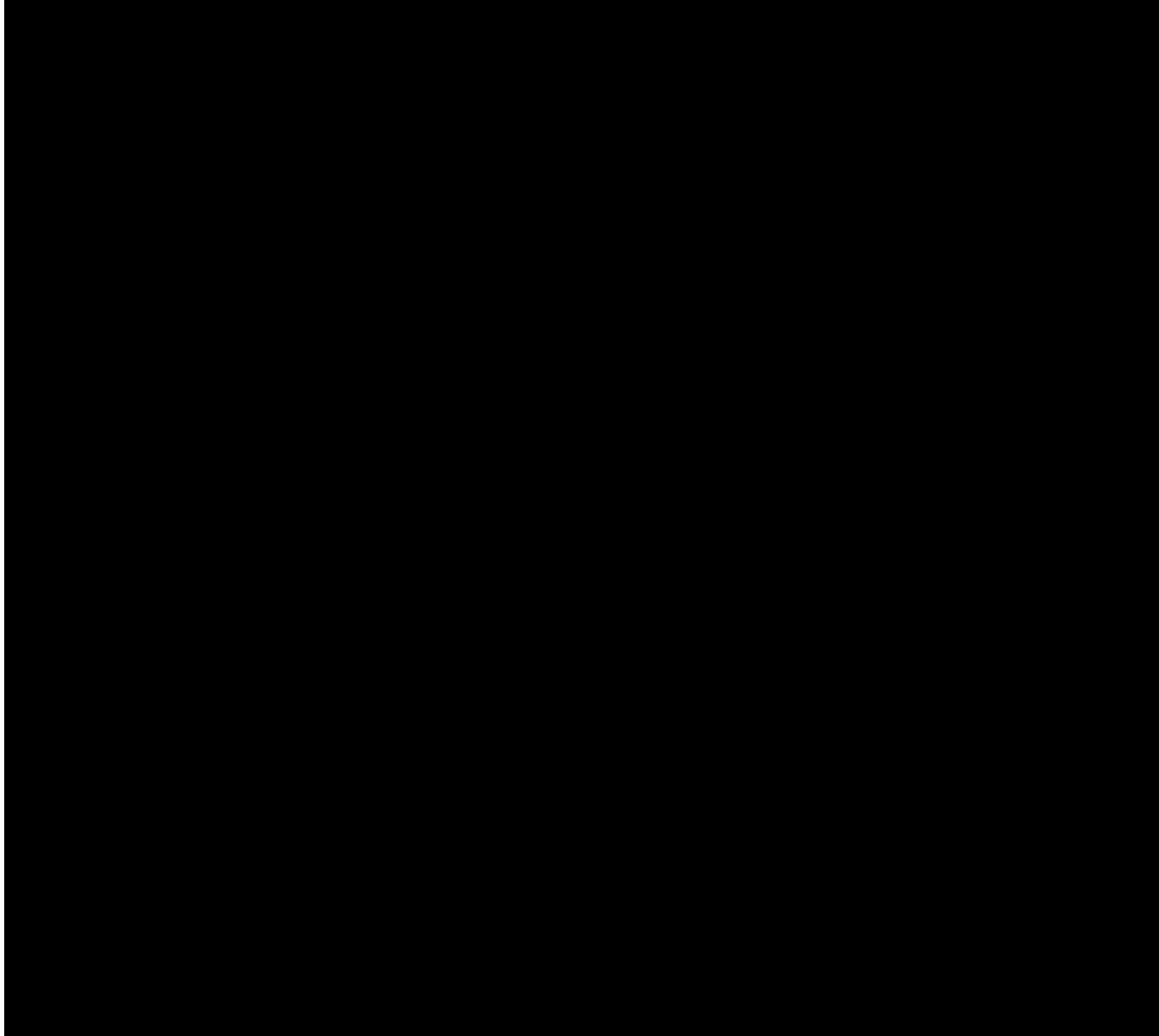
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.

1. Section 4.1 is amended by deleting the phrase “or by Buyer’s failure to perform” in the second and third line and replacing such phrase with “or otherwise by the terms of this Agreement” in the second and third line.
2. Section 4.2 is amended by deleting the phrase “or by Seller’s failure to perform” in the second and third line and replacing such phrase with “or otherwise by the terms of this Agreement” in the second and third line.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

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2. Section 5.1(b) is deleted in its entirety and replaced as follows: “(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated; provided, however, that it shall only be an Event of Default under this Section 5.1(b) if the adverse effect of such misrepresentation, if susceptible of cure, is not remedied within 15 days after the Party’s receiving notice thereof”.
 3. Section 5.1(e) is amended by adding at the end thereof the phrase: “or the Collateral Annex, as applicable.”
 4. Section 5.1(g) is deleted in its entirety and replaced with the following:

“if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming immediately due and payable; provided, however, that it shall not constitute an Event of Default under this Section 5.1(g) if (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such Party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third Business Day after receipt of written notice of its occurrence;”
 5. Section 5.1(h)(v) is amended to add “made in connection with this Agreement” after “any guaranty”.
 6. Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:
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7. Section 5.7 shall be amended by deleting “(a) an Event of Default or (b) a Potential Event of Default” and replacing it with “an Event of Default”.

ARTICLE SEVEN: LIMITATIONS.

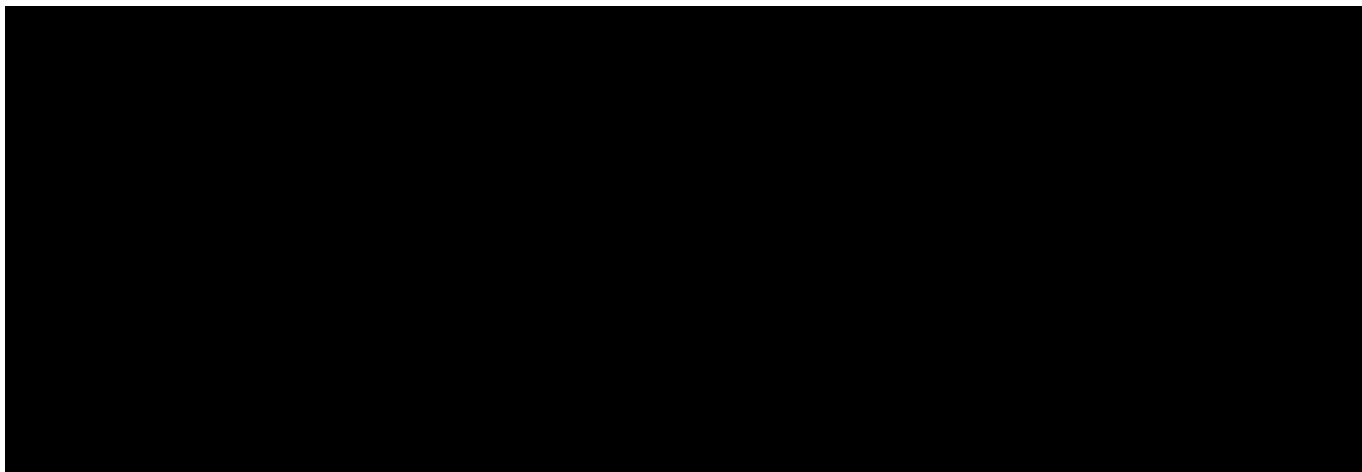
1. Section 7.1 is amended by:
- (i) adding “SPECIAL” between “EXEMPLARY” and “OR” in the fifth sentence;
 - (ii) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;
 - (iii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2 OR THE CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately

after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

- (iv) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.

1. A new Section 8.4 is added as follows:



ARTICLE TEN: MISCELLANEOUS.

1. In Section 10.2, delete the phrase “accepted in accordance with Section 2.3” from Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).
2. In Section 10.2(vii), delete the phrase “or Potential Event of Default”.
3. Section 10.2(ix) is deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code, and each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;”

4. Section 10.2 is further amended by replacing the period at the end of 10.2(xii) with a semicolon and adding the following after 10.2(xii):

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”;

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions;

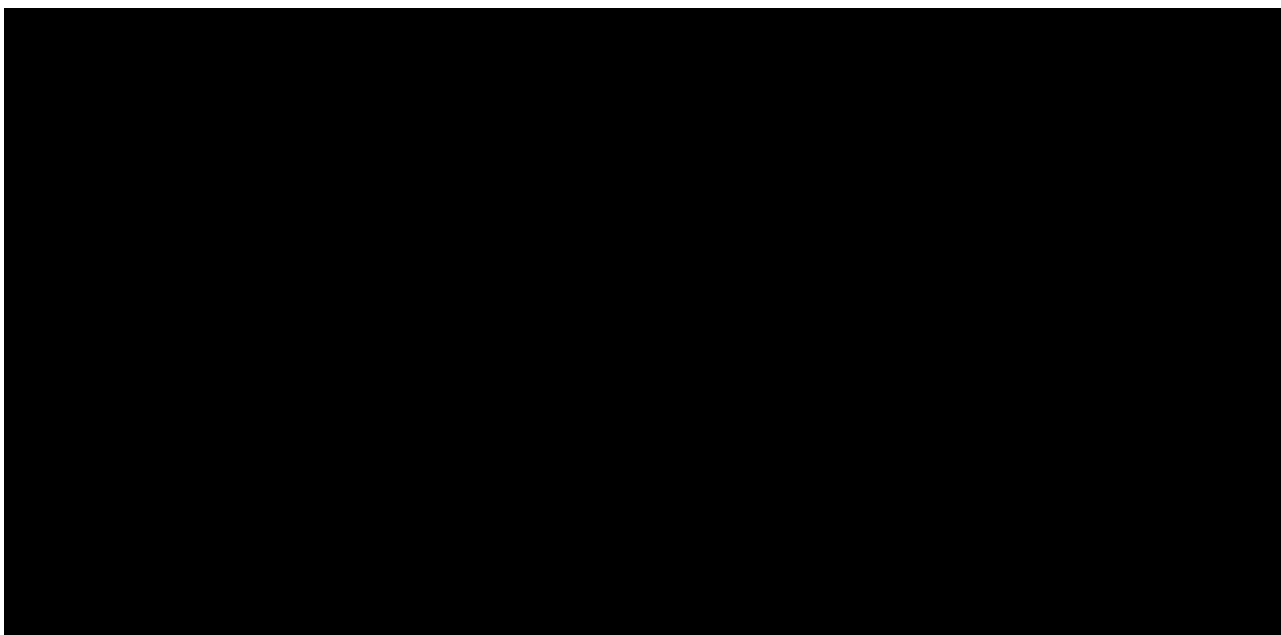
(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”); and

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

5. Section 10.4 is amended by adding the following to the end of the first sentence:

“, except where an express remedy or measure of damages is otherwise provided for such violation or breach, in which case the foregoing obligations shall not apply.”

6. Section 10.5 is deleted in its entirety and replaced as follows:



7. Section 10.6 is amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY 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 AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) 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) EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, UNLESS THE FEDERAL COURTS DO NOT HAVE JURISDICTION OVER SUCH DISPUTE, THEN THE COURTS OF THE STATE OF CALIFORNIA LOCATED IN SAN FRANCISCO, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

8. Section 10.6 is amended by changing “NEW YORK” to “CALIFORNIA”.
9. Section 10.7 is amended by (1) deleting the word “facsimile” at the end of the second sentence and replacing “facsimile” with “email”; (2) deleting the words “facsimile or” from the third sentence; (3) amending the fourth sentence by adding “, email” after “by overnight United States mail”.
10. Section 10.8 is amended by:
 - (i) deleting the phrase “accepted in accordance with Section 2.3” in the first sentence;
 - (ii) changing the words “parties” and “party” to “Parties” and “Party” in the third sentence;
 - (iii) deleting the second to last sentence and replacing it with the following: “The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations, the audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months, and any applicable provisions of this Agreement (including, but not limited to, Article 5, Section 7.1, Section 10.6, and Section 10.16) shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.”; and
 - (iv) adding the following to the end thereof: “This Master Agreement and any Confirmation hereunder may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by a PDF attached to an email shall be the same as delivery of a manually executed signature page. The Parties may rely on electronic and or scanned signatures as originals under this Master Agreement and any Confirmation.”
11. Section 10.9 is amended by replacing the first sentence with the following:

“Each Party agrees to provide copies of its records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement if reasonably requested by the other Party.” In the second sentence insert the words “copies of” before the word “statements”. In the third sentence, the words “If any such examination reveals any inaccuracy in any statement,” are replaced by: “If the Parties determine that any statement, charge or computation contained

any inaccuracy.”. Add the following text at the end: “The Parties agree that such examination and audit refer only to the examination and audit of copies of the relevant books, records and telephone recordings provided by a Party and do not grant either Party the right to an on-premises examination and audit.”

12. Section 10.10 is amended by adding the following after the last sentence:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor.”

13. Section 10.11 “Confidentiality” is deleted in its entirety and replaced with the following Mobile-Sierra clause as a new Section 10.11:

“Standard of Review/Modifications.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and further refined in *NRG Power Marketing v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

(c) The Parties agree that in the event that any portion of this Section 10.11 is determined to be invalid, illegal or unenforceable for any reason, the provisions of subsections (a) and (b) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.”

14. The following is added as a new Section 10.12:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy or capacity attributes. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

15. The following is added as a new Section 10.13:

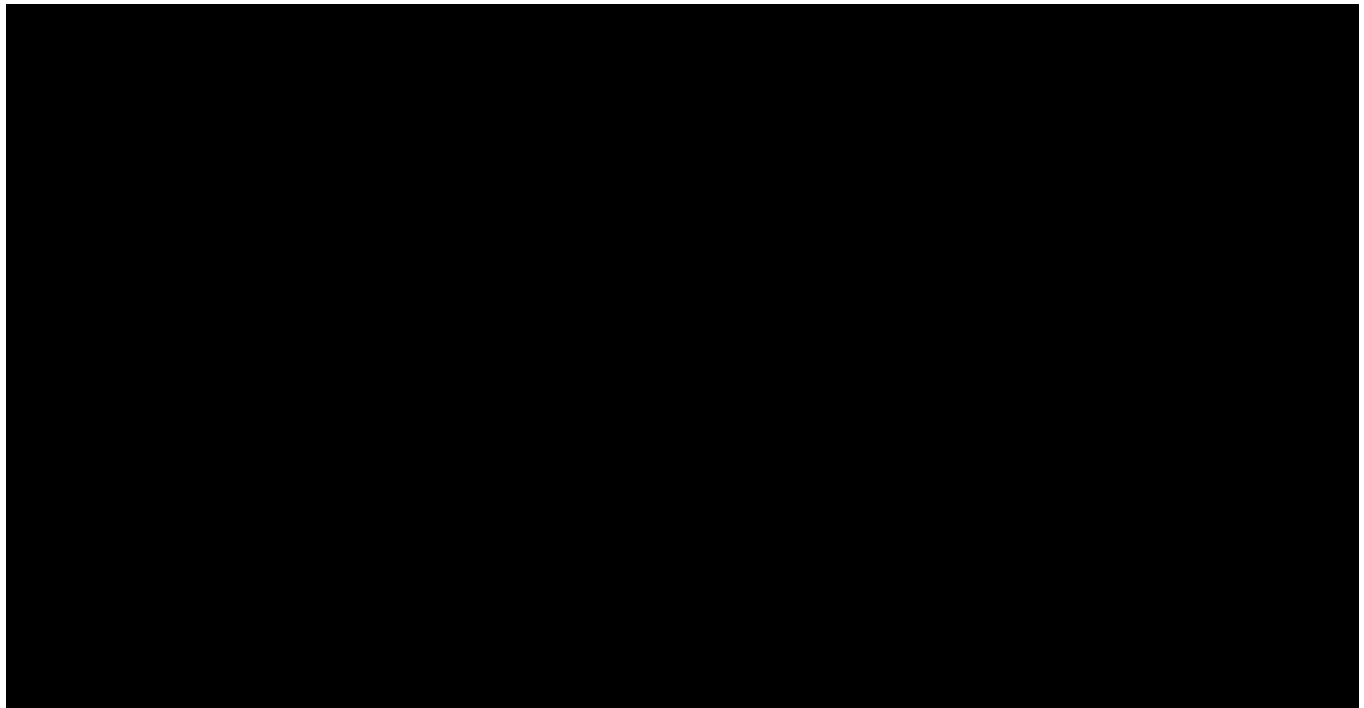
“Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

16. The following is added as a new Section 10.14:

“No Recourse Against Constituent Members of Party B. Party B 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.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.”

17. The following is added as a new Section 10.15:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction, unless otherwise specified in the relevant Confirmation:



“Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

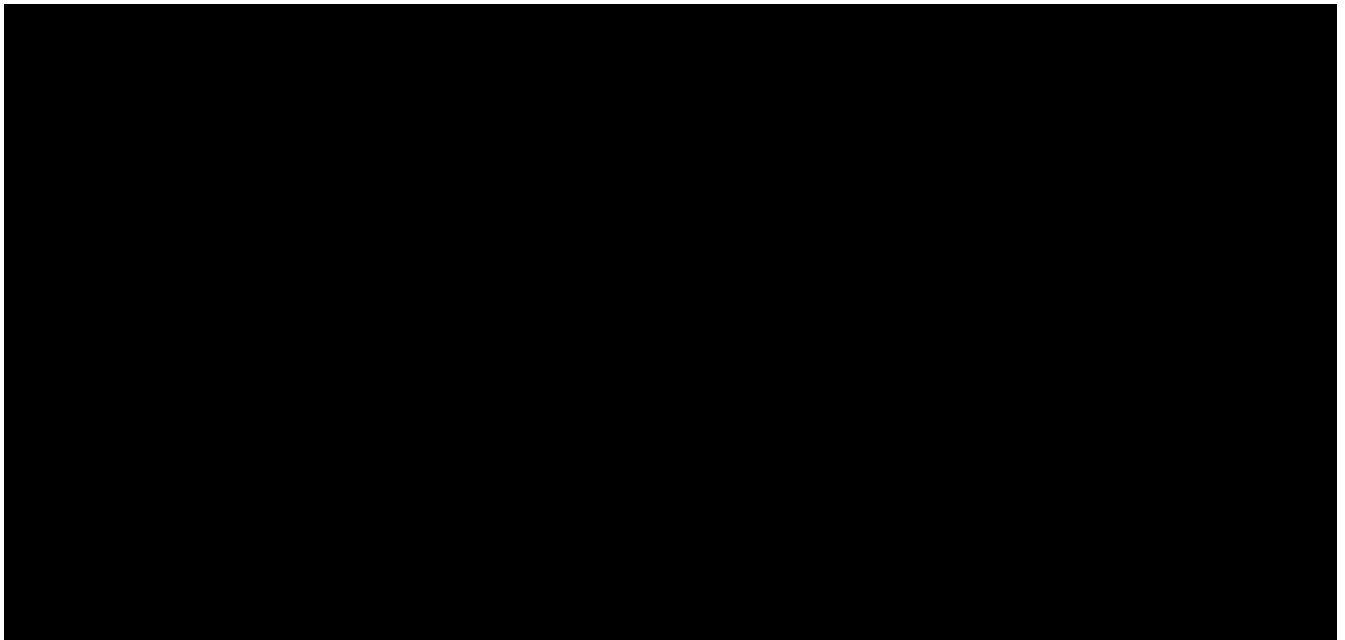
“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.



“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

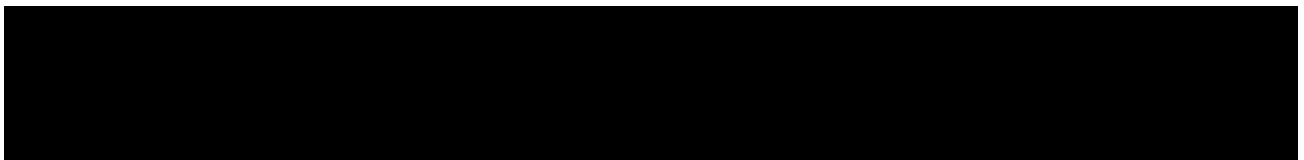
“Trading Day” means a day in respect of which the relevant Price Source published or should have published the Floating Price.

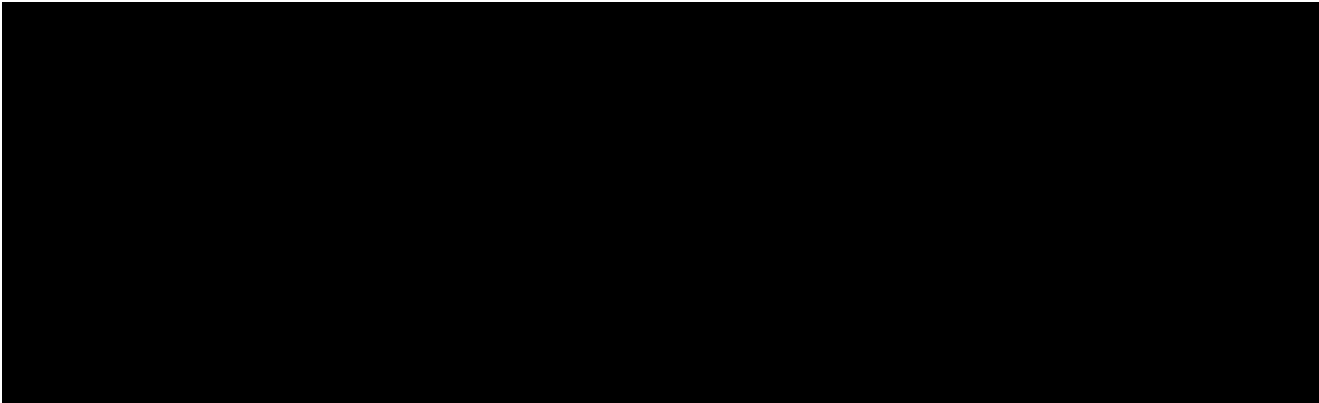


18. The following is added as a new Section 10.16:

“Party A’s Deliveries. Upon request, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, and (ii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

19. The following is added as a new Section 10.17:





20. The following is added as a new Section 10.18:

“Business and Human Rights. In connection with this Master Agreement, Party A and Party B shall conduct their respective businesses in a manner that respects the rights and dignity of all people and internationally recognized human rights, including without limitation, by:

- (a) not employing, engaging or otherwise using forced labor, trafficked labor or exploitative child labor, nor engaging in or condoning abusive or inhumane treatment of workers;
- (b) providing equal opportunities, avoiding discrimination and respecting freedom of association of workers, in each case within the relevant national legal framework; and
- (c) mitigating or avoiding adverse human rights impacts to communities arising from their respective activities to the extent practicable.”

21. The following is added as a new Section 10.19:

“Imaged Agreement. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically (“Imaged Documents”). Imaged Documents shall be admissible in any judicial, administrative, or arbitration proceeding to the same extent as original documents, shall constitute original business records for purposes of all applicable evidentiary rules, and neither Party shall dispute or object to their authenticity, admissibility, or evidentiary weight solely because they are maintained in electronic or imaged form.”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS.

Schedule M is hereby deleted in its entirety and replaced with the following:

1. The Parties agree to add the following definitions to Article One:

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

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

2. The following sentence shall be added to the end of the definition of **“Force Majeure”** in Article One:

“If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.”

3. The Parties agree to add the following sections to Article Three:

“Section 3.4 Party B ’s Deliveries. Upon request by Party A, Party B shall provide Party A (a) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (b) a certificate, signed by an authorized signatory of Party B, certifying the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to this Master Agreement or any credit support provided with respect to this Master Agreement or the Collateral Annex from (a) suit, (b) jurisdiction of court (including a court located outside of the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

4. The Parties agree to add the following representations and warranties to Section 10.2:

“Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System’s obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System’s obligations hereunder and under each Transaction or (c) to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.”

5. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

“IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.

1. The Parties agree to add the following definitions to Schedule P:

“**CAISO Energy**” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator (“CAISO”) Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO Tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” as defined in the CAISO Tariff.

2. The Parties agree to add the following new Section 7 to Schedule P:

“**Other Products and Service Levels:** The Parties may agree to use a product/service level defined by a different agreement (e.g., the CAISO Tariff) for a particular Transaction. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such Transaction, the Transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions; (2) the regional reliability requirements and guidelines; and (3) Force Majeure/Uncontrollable Force definitions shall have the meaning ascribed to them in the different agreement in effect on the date the Transaction was entered into.”

3. Within each applicable Confirmation, the Parties may from time to time by notice to each other mutually agree to adopt product definitions, delivery point language and definitions, and conversion conventions, that are posted by the Edison Electric Institute to its website as optional language for the Master Power Purchase and Sale Agreement.

[Signatures appear on the following page.]

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

**J.P. MORGAN VENTURES ENERGY
CORPORATION**

MARIN CLEAN ENERGY, a California joint
powers authority



By: _____

Name: _____

Title: _____

Date: _____

MARIN CLEAN ENERGY, a California joint
powers authority

By: _____

Name: _____

Title: _____

Date: _____

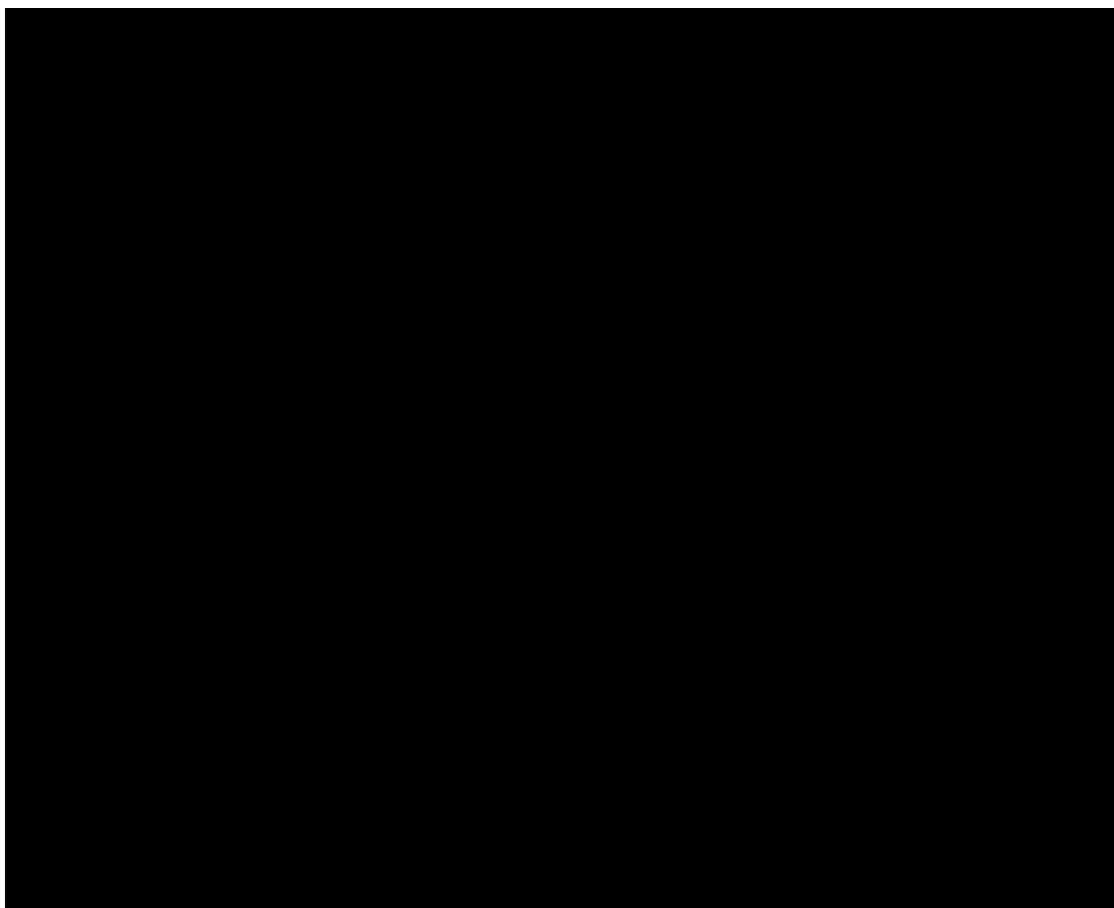
DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor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

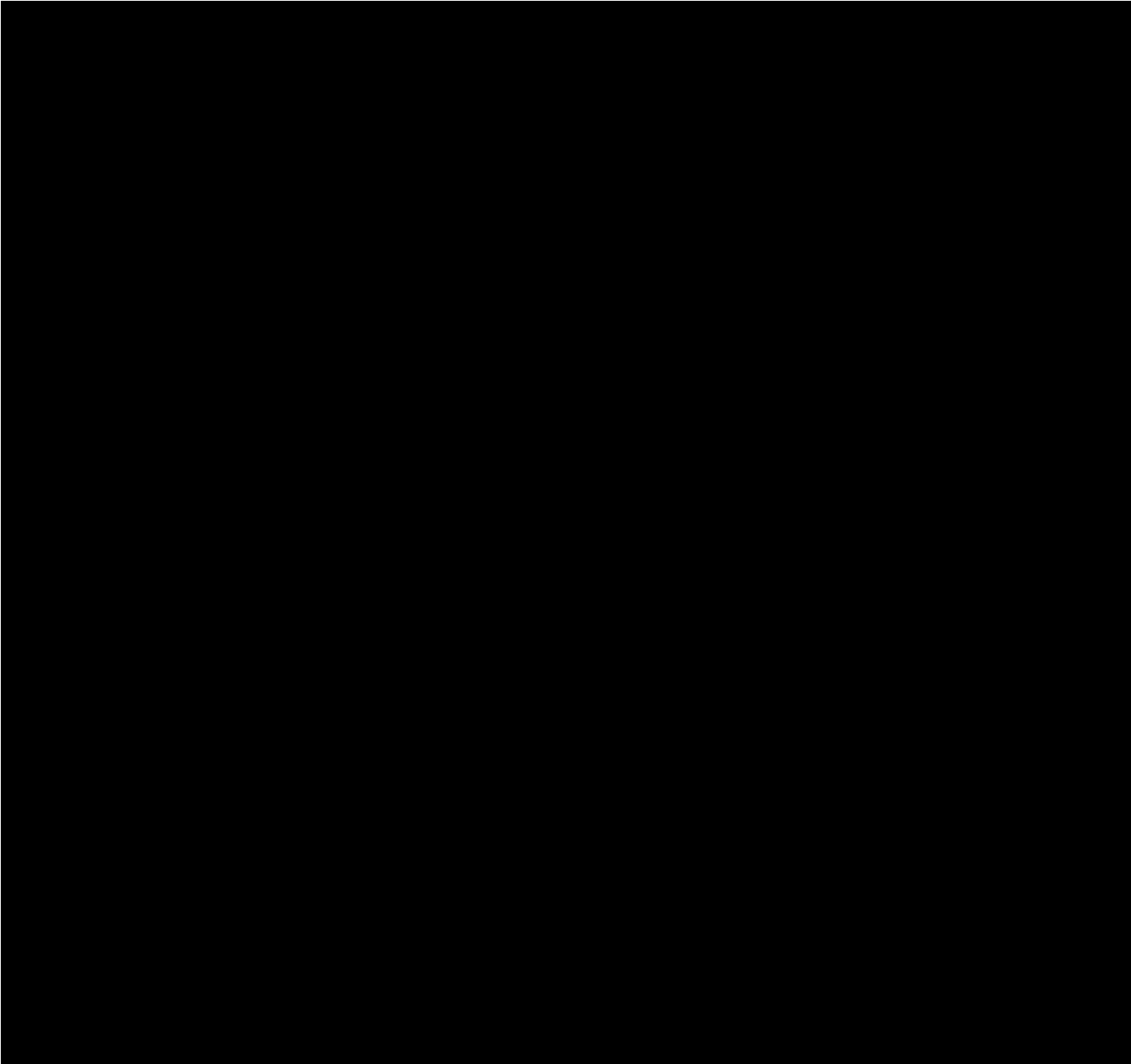
PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT
Dated as of the Effective Date of the EEI Master Power Purchase and Sale Agreement
Between
J.P. Morgan Ventures Energy Corporation (“Party A”)
and
Marin Clean Energy (“Party B”)
CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

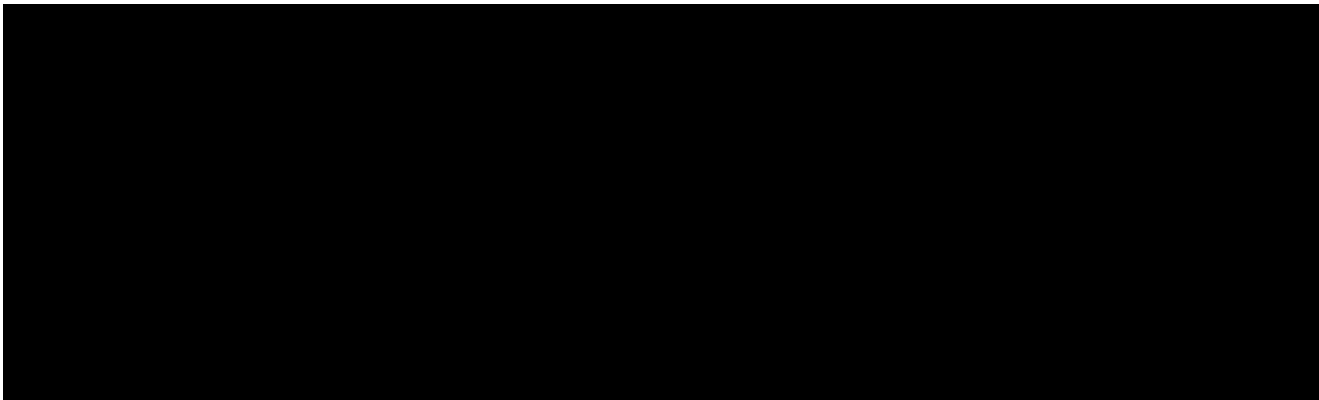
I. Collateral Threshold.

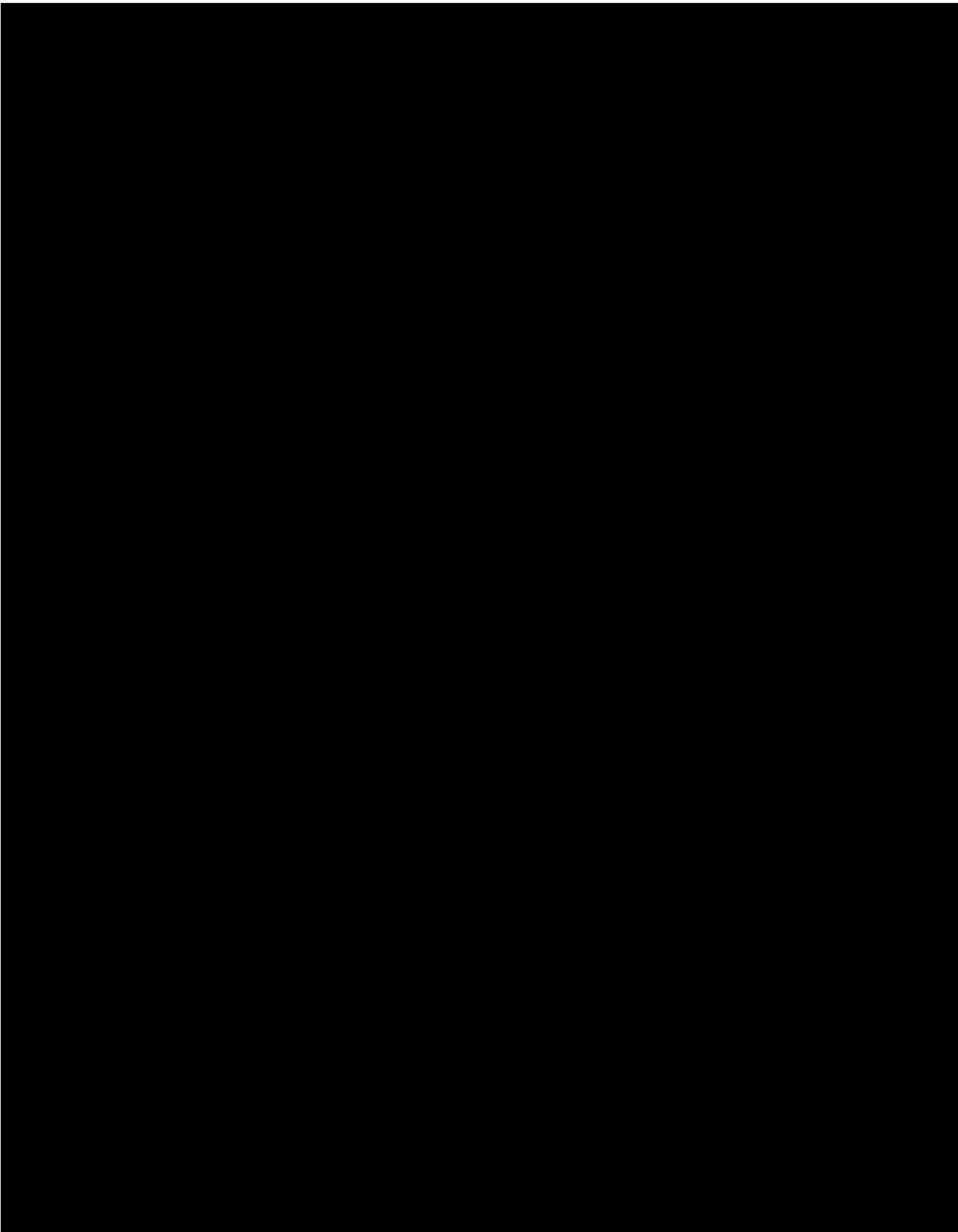
A. Party A Collateral Threshold.





B. Party B Collateral Threshold.





II. Eligible Collateral and Valuation Percentage.

The following items will qualify as “Eligible Collateral” for the Party specified:

		<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	[X]	[X]	100%
(B)	Letters of Credit	[X]	[X]	100% unless either (i) a Letter of Credit Default shall have occurred and is continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Local Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____ %

III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$0 (zero). If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Fixed IA Performance Assurance”). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A’s Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Partial Floating IA Performance Assurance”) if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so

long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable unless otherwise specified in a Confirmation.

B. Party B Independent Amount.

☐ Party B shall have a Fixed Independent Amount of \$0 (zero). If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable unless otherwise specified in a Confirmation.

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** [REDACTED]
- B. **Party B Minimum Transfer Amount:** [REDACTED]

provided that, in each case, (i) if the Party is a Defaulting Party at the time, its Minimum Transfer Amount will be zero, (ii) if a Secured Party is holding an amount of Posted Credit Support at the time, the Secured Party's Credit Support Amount is, or is deemed to be, zero at the time, and, but for its Minimum Transfer Amount, the Secured Party would be required to make a Transfer under Paragraph 4, the Minimum Transfer Amount for the Secured Party will be zero, and (iii) if no Transactions are outstanding, then the Minimum Transfer Amount for both Parties will be zero.

V. Rounding Amount.

- A. **Party A Rounding Amount:** [REDACTED]
- B. **Party B Rounding Amount:** [REDACTED]

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☒ Party A or Party A's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) Party A is not subject to an Event of Default; (2) Party A's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent JPMorgan Chase & Co.'s Credit Rating is below [REDACTED], Party A shall appoint a Custodian to hold Performance Assurance. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☒ Other - SOFR. For purposes of the foregoing, "SOFR" means, for any day, the rate published as the Secured Overnight Financing Rate (SOFR) that appears on Bloomberg Page SOFRRATE for such day, or as published in another source mutually agreed by the Parties.

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- ☒ Party B or Party B's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) Party B is not subject to an Event of Default; (2) Party B's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B's Credit Rating is below [REDACTED], Party B shall appoint a Custodian to hold Performance Assurance. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☒ Other – SOFR.

VII. Notification Time.

- ☒ Other – 10:00 a.m. Pacific Prevailing Time on a Local Business Day.

VIII. General.

Amendments to Introductory Paragraph:

- (i) The first paragraph of the introduction shall be amended to read as follows:

"This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the "Collateral Annex") supplements, forms a part of, and is subject to the EEI Master Power Purchase and Sale Agreement between J.P. Morgan Ventures Energy Corporation ("Party A") and Marin Clean Energy, a California joint powers authority ("Party B"), including the Cover Sheet and any other annexes thereto (as amended and supplemented from time to time, the "Agreement"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given to such terms in the Agreement."

Amendments to Definitions:

- (i) The definition of "Credit Rating" is amended and restated in its entirety as follows:

"Credit Rating" means, with respect to an entity on any date of determination, the rating assigned by [REDACTED] as applicable, to the long term, unsecured, and

unsubordinated indebtedness of such party, or if applicable, the credit support provider of such party.”

(ii) “Credit Rating Event” shall be amended by replacing “6(a)(iii)” with “6(a)(ii)”.

(iii) The following definition of “Disputing Party” is added:

“Disputing Party” has the meaning specified in Paragraph 8.

(iv) “Downgraded Party” shall be amended by replacing “6(a)(i)” with “6(a)(ii)”.

(v) The definition of “Exposure” is deleted and replacing with the following:

““Exposure” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 8 in the case of a dispute, the amount, if any, that would be payable to the Secured Party by the Pledging Party (expressed as a positive number) or by the Secured Party to the Pledging Party (expressed as a negative number) if all Transactions were being terminated as of the relevant Valuation Time; provided that the Termination Payment will be determined by the Valuation Agent on behalf of that party using its estimates at mid-market of the amounts that would be paid for transactions providing the economic equivalent of the material terms of the Transactions, including the payments and deliveries by the Parties under Section 3.1 in respect of the Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date.”

- (viii) “Local Business Day” shall be amended by replacing the word “day” with “Business Day”.
- (ix) “Notification Time” shall be amended by replacing “11:00, New York time” with “10:00 a.m. Pacific Prevailing Time on a Local Business Day.”
- (x) “Performance Assurance” shall be amended by replacing “6(a)(iv)” with “6(a)(iii)”.
- (xi) “Qualified Institution” shall be amended to read as follows:

““Qualified Institution” means a major commercial bank organized under the laws of the United States, or the United States branch of a major commercial bank organized under the laws of any other country, acceptable to the Secured Party in its reasonable discretion, having assets of at least [REDACTED] and a long-term senior unsecured debt rating or deposit rating (in either case, not supported by third-party credit enhancements) of at least (i) “A-” from S&P and (ii) “A3” from Moody’s.”
- (xii) The following definition of “Resolution Time” is added:

““Resolution Time” means 10:00 a.m. Pacific Prevailing Time, on the Local Business Day following the date on which notice is given that gives rise to a dispute under Paragraph 8.”
- (xiii) “Secured Party” shall be amended by replacing “3(b)” with “3(a)”.
- (xiv) Clause (b) of the definition of “Transfer” is deleted and replaced with the following:

(b) in the case of Letters of Credit, (1) for purposes of Paragraph 4, delivery by the Pledgor to the Secured Party, at the address for Performance Assurance specified in the Cover Sheet to this Agreement, or (2) for purposes of Paragraph 5, return by the Secured Party to the Pledgor, at the address for Performance Assurance specified in the Cover Sheet to this Agreement, or agreement by the Secured Party to an amendment to the Letter of Credit in form and substance satisfactory to the Pledgor, reducing the amount available to the Secured Party thereunder.
- (xv) The following definition of “Valuation Agent” is added:

“Valuation Agent” means the party making the demand under Paragraph 4, unless there has occurred and is continuing any Event of Default with respect to such party, in which case the other party shall be the Valuation Agent.
- (xvi) The following definition of “Valuation Date” is added:

“Valuation Date” means any Local Business Day.
- (xvii) The following definition of “Valuation Time” is added:

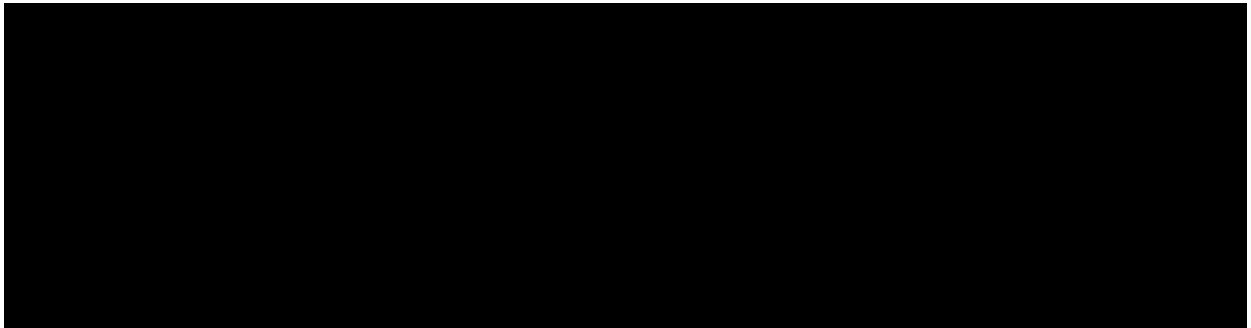
“Valuation Time” means the close of business in the city of the Valuation Agent on the Local Business Day immediately preceding the Valuation Date or date of calculation, as applicable; provided that the calculations of Collateral Value and Exposure will be made as of approximately the same time on the same date.

Amendments to Paragraph 3:

- (i) The following shall be added to the end of Paragraph 3:

“(c) All calculations of Collateral Value and Exposure for purposes of Paragraph 3 will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date.”

Amendments to Paragraph 4:



- (ii) The following is added after the last sentence of Paragraph 4:

“Notwithstanding any other provision in this Master Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified herein, regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such Party.”

- (iii) The following is also added after the last sentence of Paragraph 4:

“For purposes of Section 5.1(e) of the Agreement, an Event of Default will exist with respect to a Party if: (i) such Party fails (or fails to cause its Custodian) to make, when due, any Transfer of Performance Assurance required to be made by it and that failure continues for one Local Business Day after notice of that failure is given to that Party.”

Amendments to Paragraph 5:

- (i) Paragraph 5(a) shall be amended by inserting “so long as the amount of the requested reduction is equal to or greater than the Minimum Transfer Amount” after “the Pledging Party for the benefit of the Secured Party” in the third line thereof.
- (ii) Paragraph 5(a) shall be further amended by deleting “before the Notification Time on a Business Day” and replacing it with “before the Notification Time on a Local Business Day”.

Amendments to Paragraph 6:

- (i) Paragraph 6(a)(ii)(A) shall be amended by inserting “(other than subparagraph (B) below)” after “the provisions of this Paragraph 6(a)(ii)” in the first line thereof.

- (ii) Paragraph 6(a)(ii)(B) shall be amended by deleting “to perfect the security interest of the Non-Downgraded Party” and replacing it with “to perfect the security interest of the Downgraded Party.”

- (iii) The first sentence of Paragraph 6(b)(i) is deleted in its entirety and replaced with the following:

“Unless agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party or its designee.”

- (iv) Paragraph 6(b)(iv) is deleted and replaced in its entirety as follows:

“(iv) Notwithstanding anything herein to the contrary, (A) upon or at any time after the occurrence and during the continuation of an Event of Default with respect to the Pledging Party or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on any outstanding Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Pledging Party but have not been paid to the Secured Party within the time allowed for such payments under this Agreement (including any related notice or grace period or both). If a Letter of Credit Default exists with respect to any Letter of Credit provided by or on behalf of the Pledging Party, then the Secured Party may draw on the Letter of Credit subject to such Letter of Credit Default in an amount equal to the entire, undrawn portion of such Letter of Credit. Draws on outstanding Letters of Credit shall be made upon submission to the bank issuing such Letter(s) of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon any Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party’s obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party’s receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.”

Amendments to Paragraph 7:

- (i) Paragraph 7(a) is amended as follows:
 - a. in line 7, by replacing the words “is deemed to occur” with “has been designated”; and
 - b. by adding the words “in the form of Cash” after the phrase “the right to set off any Performance Assurance” in clause (ii) thereof.
- (ii) Paragraph 7(b) shall be amended by deleting it in its entirety and inserting the words “Intentionally Omitted.”
- (iii) A new Paragraph 7(e) and a new Paragraph 7(f) are added as follows:

- “(e) The Secured Party will transfer to the Pledging Party any proceeds and Performance Assurance remaining after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d) after satisfaction in full of all amounts payable by the Pledging Party with respect to any Obligations; the Pledging Party will in all events remain liable for any amounts unpaid after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d).
- (f) When no amounts are or thereafter may become payable by the Pledging Party with respect to any Obligations, the Secured Party will Transfer to the Pledging Party all Performance Assurance and the Interest Amount, if any.”

Amendments to Paragraph 8:

- (i) Paragraph 8 is deleted in its entirety and replaced with the following:

“If a Party (“Disputing Party”) disputes (I) the Valuation Agent’s calculation of a Collateral Requirement or (II) the Value of any Transfer of Performance Assurance, then:

(1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 4 or 5 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to the exceptions in (i) and (ii) of Paragraph 5(b), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 4 or 5 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the Parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Collateral Requirement, the Valuation Agent will recalculate the Exposure and the Value as of the date such notice of dispute was delivered by the Disputing Party by:

(A) utilizing any calculations of Exposure for the Transactions that the parties have agreed are not in dispute; and

(B) calculating the Exposure for the Transactions in dispute by seeking four actual quotations at mid-market from third parties for purposes of calculating the relevant Termination Payment, and taking the arithmetic average of those obtained; provided that if four quotations are not available for a particular Transaction, then fewer than four quotations may be used for that Transaction, and if no quotations are available for a particular Transaction, then the Valuation Agent’s original calculations will be used for the Transaction.

(ii) In the case of a dispute involving the Value of any Transfer of Performance Assurance, the Valuation Agent will recalculate the Value as of the date of Transfer.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each Party (or the other Party, if the Valuation Agent is a Party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate Party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4 and 5, make the appropriate Transfer.”

Other Provisions:

- (i) Schedule 1 to the Collateral Annex is deleted in its entirety and replaced with Schedule 1 attached hereto.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the “Administration of Cash Collateral” section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex.

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 to the Collateral Annex to be duly executed as of the Effective Date of the EEI Master Power Purchase and Sale Agreement between the Parties.

**J.P. MORGAN VENTURES ENERGY
CORPORATION**



**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____

Name: _____

Title: _____

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____

Name: _____

Title: _____

SCHEDULE 1
FORM OF LETTER OF CREDIT

*THIS TEMPLATE IS FOR ISSUANCES OF LETTERS OF CREDIT IN PAPER FORM.
ALTERNATIVELY, THE PARTIES MAY AGREE TO ISSUANCE VIA SWIFT MT760, IN WHICH CASE
STANDARD SWIFT FIELDS AND CODES MAY BE USED AND COMMUNICATIONS, DRAWINGS
AND TRANSFERS WILL BE VIA AUTHENTICATED SWIFT MESSAGES THROUGH JPMORGAN
CHASE BANK, N.A. AS ADVISING BANK WITHOUT ANY REQUIREMENT TO PRESENT THE
ORIGINAL LETTER OF CREDIT OR RELATED DOCUMENTS IN PAPER FORM*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT
AMOUNT: UP TO THE MAXIMUM AMOUNT OF UNITED STATES

\$ _____
DATE OF ISSUANCE: _____
[NAME OF ISSUING BANK]

_____, 20__

Issuing Bank:

[Name]

[Address]

Beneficiary:

JPMorgan Chase Bank, N.A.

[Address]

Attention:

Applicant:

[Address]

Attention:

Ladies and Gentlemen:

We hereby establish in favor of JPMorgan Chase Bank, N.A. (the "Beneficiary") for the account of [counterparty] (the "Applicant") this irrevocable standby letter of credit (this "Letter of Credit") pursuant to that certain EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex dated as of [_____] and as amended or otherwise modified from time to time between Applicant and Beneficiary (the "Master Agreement") whereby you are authorized to draw at sight on [NAME OF ISSUING BANK] (as issuer of this Letter of Credit, the "Issuing Bank"), Irrevocable Letter of Credit No. _____, for an aggregate amount not exceeding USD _____, as set forth herein.

This Letter of Credit is effective immediately and expires at the close of banking business at our office located at _____, on [INSERT INITIAL EXPIRATION DATE]; provided that it is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiration date hereof unless at least thirty (30) Business Days (as hereinafter defined) prior to any such date we send notice to you in writing by courier service or hand delivery to the address and person identified as the addressee that we elect not to consider this Letter of Credit extended for any such additional period, at which time you may draw under this Letter of Credit by presenting to us a certificate in the form annexed hereto as Attachment A (with the blanks completed).

Funds under this Letter of Credit are also available to you at sight against a certificate in the form annexed as Attachment A (with the blanks completed) presented to us on a Business Day at our office set forth above on or before the expiration date hereof. Partial and multiple drawings are permitted.

If a drawing in compliance with this Letter of Credit is made by you hereunder on a Business Day at or prior to 11:00 a.m. (New York City time), payment shall be made of the amount specified in immediately available funds by 4:00 p.m. (New York City time) on the same Business Day. If a conforming drawing is made by you hereunder on a Business Day after 11:00 a.m. (New York City time), payment shall be made of the amount specified in immediately available funds by 1:00 p.m. (New York City time) on the next succeeding Business Day. The Issuing Bank will pay all drawings under this Letter of Credit with its own funds, and not with funds derived from the Applicant or a subsidiary or affiliate thereof. Payment for any drawing under this Letter of Credit shall be made by the Issuing Bank by wire transfer of immediately available funds to the account specified in the certificate delivered in connection with the drawing. As used in this Letter of Credit, the term "Business Day" shall mean any day other than (a) a Saturday or Sunday or (b) a day on which commercial banks in New York, New York or the state in which the office of Issuing Bank is located are authorized or required by law to close.

All Issuing Bank charges are for the account of the Applicant.

This Letter of Credit is issued to support the obligations of Applicant under the Master Agreement between Applicant and Beneficiary.

This Letter of Credit shall be subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication 590, and as to matters not covered therein, be governed by the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in such state.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to the Issuing Bank at [Address], Attention: _____ (or otherwise as designated by the Issuing Bank to the Beneficiary by written communication), specifically referring therein to "[NAME OF ISSUING BANK] Irrevocable Letter of Credit No. _____." All notices to the Beneficiary hereunder shall be addressed to you at the address set forth above.

This Letter of Credit shall not be amended except with the written concurrence of Beneficiary, Applicant and Issuing Bank, except that increases and extensions by Issuing Bank shall not require the written concurrence of Beneficiary.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement, except only the certificates, the transfer form and sight drafts, referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

Very truly yours,

[NAME OF ISSUING BANK]

By _____
Authorized Officer

Attachment A

DRAWING CERTIFICATE

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of *[insert Beneficiary name]*, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. *[XXXXXXXX]* (the "Letter of Credit") issued by *[insert bank name]* (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex dated as of _____ and as amended or otherwise modified from time to time (the "Master Agreement").
2. An Event of Default (as defined in the Master Agreement) has occurred and is continuing with respect to Applicant under the Master Agreement or an Early Termination Date has occurred or been designated. Wherefore, the undersigned does hereby demand payment in an amount equal to all amounts due and owing of \$[_____].

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within twenty (20) Local Business Days prior to such Expiration Date or a Letter of Credit Default (as defined in the Master Agreement) exists.

3. The undersigned is a duly authorized representative of *[insert Beneficiary name]* and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to *[insert Beneficiary name]* by wire transfer in immediately available funds to the following account: *[specify account information]*

[insert Beneficiary name]

[name and title of authorized representative]

Date _____

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name ("_____ " or "Party A")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

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

Attn: _____

Phone: _____

Facsimile: _____

Name ("Counterparty" or "Party B")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

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

Attn: _____

Phone: _____

Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies ☐ Cross Default for Party A:
☐ Party A: _____ Cross Default Amount \$ _____
☐ Other Entity: _____ Cross Default Amount \$ _____
☐ Cross Default for Party B:
☐ Party B: _____ Cross Default Amount \$ _____
☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- ☐ Option A (Applicable if no other selection is made.)
☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)
-

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- ☐ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
☐ Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

- ☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

☐ Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

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

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

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

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

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

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

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

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

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

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

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

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

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

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

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

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

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

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

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

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

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

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

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

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

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

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

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

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

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

- ☐ Into _____, Seller’s Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☐ Unit Firm
(Specify Unit(s): _____)
- ☐ Other _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| ☐ FT-Contract Path Contingency | ☐ Seller | ☐ Buyer |
| ☐ FT-Delivery Point Contingency | ☐ Seller | ☐ Buyer |
| ☐ Transmission Contingent | ☐ Seller | ☐ Buyer |
| ☐ Other transmission contingency | | |
- (Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Paragraph 10 to the Collateral Annex

Version 1.0
2/21/02

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold

A. Party A Collateral Threshold.

- ☐ \$ _____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____
	—

- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, and if [Party A’s][Party A’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A		
<u>Collateral Threshold</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- ☐ The amount of the Guaranty Agreement date _____ from _____, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$_____.
- ☐ Other – see attached threshold terms

B. Party B Collateral Threshold.

- ☐ \$_____ (the "Threshold Amount"); provided, however, that the _____ Collateral Threshold for Party B shall be zero upon the occurrence and during _____ the continuance of an Event of Default or a Potential Event of Default with _____ respect to Party B; and provided further that, in the event that, and on the date _____ that, Party B cures the Potential Event of Default on or prior to the date that _____ Party B is required to post Performance Assurance to Party A pursuant to a _____ demand made by Party A pursuant to the provisions of the Collateral Annex on _____ or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold _____ Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- ☐ (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party B	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, and if [Party B’s][Party B’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the relevant rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance pursuant to such demand.

Party B		
<u>Collateral</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
<u>Threshold</u>		
\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$_____.
- ☐ Other – see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party</u> <u>A</u>	<u>Party</u> <u>B</u>	<u>Valuation Percentage</u>
(A)	Cash	[]	[]	100%
(B)	Letters of Credit	[]	[]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____%

III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral requirement pursuant to the Collateral Annex. Except as expressly set forth above, the

Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

- ☐ Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. Party B Independent Amount.

- ☐ Party B shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding Obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with,

and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 the Collateral Annex.

- ☐ Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

- ☐ Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

A. Party A Minimum Transfer Amount: \$_____

B. Party B Minimum Transfer Amount: \$_____

V. Rounding Amount.

A. Party A Rounding Amount: \$_____

B. Party B Rounding Amount: \$_____

VI. Administration of Cash Collateral.**A. Party A Eligibility to Hold Cash.**

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☐ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party A] [Party A's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party A] [Party A's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States, and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - _____

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.

- ☐ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party B][Party B's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party B][Party B's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☐ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - _____

VII. Notification Time.

- ☐ Other - _____

VIII. General.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 1- but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.



September 4, 2026

TO: MCE Technical Committee

FROM: Stephen Mariani, Manager of Power Resources
Haynes Stephens, Senior Policy Analyst

RE: MCE 2025 Power Source Disclosure Attestation (Agenda Item #06)

ATTACHMENTS: A. MCE 2025 Power Source Disclosure Annual Report Template
B. *Proposed* Resolution 2026-08 Approving and Attesting to the Veracity of the Information Presented in MCE's 2025 Power Source Disclosure Annual Report
C. MCE 2025 Power Source Disclosure Attestation Presentation

Dear Technical Committee Members:

Summary:

Staff recommends the Technical Committee recommend the Board of Directors adopt *proposed* Resolution 2026-08 at the September 17, 2026 Board of Directors Meeting approving MCE's 2025 Power Source Disclosure Annual Report (PSD Report) and attesting, to the best of its knowledge and belief, to the veracity of information presented therein.

Background:

The California Energy Commission (CEC), as directed by California Public Utilities Code, administers California's Power Source Disclosure (PSD) program.¹ The PSD program is intended to ensure customers receive energy-source and greenhouse gas (GHG) information on the electricity they use.

The PSD program requires all retail sellers of electric energy, including MCE, to annually disclose "accurate, reliable, and simple-to-understand information on the sources of energy, and the associated emissions of greenhouse gasses, that are used to provide electric services."² The PSD program has two main required elements: 1) a Power Source Disclosure Annual Report (PSD Report); and the Power Content Label (PCL).

To comply with PSD regulations, MCE must first submit a PSD Report to the CEC detailing its specified-source power purchases for each retail service offering that was made available

¹ California Public Utilities Code 398.1 *et seq.*

² California Public Utilities Code Section 398.1(b)

during the previous year, using a CEC required template.³

After MCE submits its PSD Report to the CEC, the CEC uses the information reflected in the PSD Report to create and finalize MCE's annual PCL. Similar to the standardized presentation of information on a nutritional label, the PCL informs retail electricity customers of the power sources that were procured to serve their electric energy retail sales. Once finalized, the PCL is provided to MCE (recent CEC guidance indicated that the CEC will provide MCE the official 2025 PCL by the end of September 2026), and MCE must distribute customer communications regarding the PCL by December 31 of that year.

The PCL includes information on the "the power mix and greenhouse gas emissions intensity associated with each electricity portfolio" that MCE offers to its customers. Each portfolio's power mix reflects annual retail energy sales and the specified power purchases, by resource type, used to meet those sales. Specified power is electricity that is traceable to a specific generating facility, whereas unspecified power is not traceable and typically comprises a mix of resource types, some of which may be renewables. If a retail seller uses unspecified power purchases to meet retail sales, or if it relies on grid power to meet retail sales, then such unspecified power is reflected on its PCL. Beginning with the 2025 reporting year, the PCL will also show loss-adjusted load for each portfolio, reflecting the electricity lost during transmission and distribution across the grid.

MCE's 2025 PSD Report:

Consistent with applicable regulations, MCE must also provide the CEC with a board attestation regarding the accuracy of information included in its PSD Report for the 2025 operating year. Regarding this internally administered attestation process, applicable regulations state:⁴

*A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (a)(1) if the board of directors of the public agency submits to the Energy Commission an attestation of the veracity of each annual resource report for the previous year.*⁵

Evidence of MCE's attestation must be provided to the CEC no later than October 1, 2026.

To prepare MCE's 2025 annual PSD Report, staff performed a detailed review of all power purchases completed during the 2025 calendar year, including an inventory of all renewable energy credit transfers within MCE's Western Renewable Energy Generation Information System (WREGIS) account, related contract documents, and pertinent transaction records associated with other specified energy purchases. Based on staff's review of available data, the information presented in the annual report was determined to be accurate.

³ California Code of Regulations Title 20, Div 2, Ch 3, Article 5, Section 1393(a).

⁴ Note that California Code of Regulations Title 20, Div 2, Ch 3, Article 5, Section 1394.(a)(1), as referenced in the excerpt from applicable PSD regulations, refers to the completion of an annual independent audit containing summary of results and proof of service of the annual power content label to customers.

⁵ California Code of Regulations Title 20, Div 2, Ch. 3, Article 5, Section 1394(a)(2), as amended by Rulemaking to Amend Regulations Governing the PSD Program (Docket No: 21-OIR-01). Pursuant to the amended regulations and new procedures, the CEC will provide a PCL to each LSE following PSD Report submission.

In consideration of (a) MCE's internal review, (b) the Technical Committee's review of MCE's 2025 PSD Report and *proposed* Resolution 2026-08, and (c) applicable regulations, staff recommends that the Technical Committee accept this determination of informational accuracy and recommend the Board of Directors adopt *proposed* Resolution 2026-08 approving the PSD Report and attesting to the veracity, to the best of its knowledge and belief, of the information contained therein at the September 17, 2026 Board Meeting. Should the Technical Committee endorse staff's recommendation, and the Board adopt *proposed* Resolution 2026-08, a copy of the executed Resolution 2026-08 will be forwarded to the CEC, and a copy of MCE's PCL will be posted to its website by October 1, 2026.⁶

To fulfill its obligations under the PSD program, MCE will complete requisite customer communications after the organization receives its PCL from the CEC, which is expected to occur sometime prior to October 1, 2026. Retail sellers are required to post its 2025 PCL to its website no later than October 1, 2026, and must distribute customer communications regarding the PCL by December 31, 2026.

The tables below are excerpts from MCE 2025 PSD Report. These tables reflect that during the 2025 calendar year, MCE delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal, hydroelectricity, biomass and landfill gas-to-energy. For the Light Green portfolio, 75 percent of energy retail sales were met with specified purchases from CEC-certified renewable resources, with the remaining 25 percent sourced from zero-carbon resources. For the Deep Green, Local Sol and Green Access portfolios, energy retail sales were met entirely with specified purchases from renewable resources.

⁶ California Code of Regulations Title 20, Div 2, Ch. 3, Article 5, Section 1393.1(b)(2).

2025 Draft PCL: Deep Green Portfolio

Emissions, Power Sources, Unbundled RECs	Deep Green
Retail Sales and Loss-Adjusted Load	465,344
GHG Emissions Intensity (lbs CO₂e/MWh)	0
■ Renewables and Zero-Carbon Resources	100%
■ Fossil Fuels	0%
Biomass & Biogas	0%
Geothermal	0%
Eligible Hydroelectric	0%
Solar	50%
Wind	50%
RPS Eligible Renewables - Subtotal	100%
Large Hydroelectric	0%
Nuclear	0%
Emerging Technologies	0%
Other	0%
Natural Gas	0%
Coal & Petroleum	0%
Unspecified Power - Total	0%
Retail Sales Covered by Retired Unbundled RECs	0%

2025 Draft PCL: Local Sol Portfolio

Emissions, Power Sources, Unbundled RECs	LocalSol
Retail Sales and Loss-Adjusted Load	2,123
GHG Emissions Intensity (lbs CO₂e/MWh)	0
■ Renewables and Zero-Carbon Resources	100%
■ Fossil Fuels	0%
Biomass & Biogas	0%
Geothermal	0%
Eligible Hydroelectric	0%
Solar	100%
Wind	0%
RPS Eligible Renewables - Subtotal	100%
Large Hydroelectric	0%
Nuclear	0%
Emerging Technologies	0%
Other	0%
Natural Gas	0%
Coal & Petroleum	0%
Unspecified Power - Total	0%
Retail Sales Covered by Retired Unbundled RECs	0%

2025 Draft PCL: Light Green Portfolio

Emissions, Power Sources, Unbundled RECs	LightGreen
Retail Sales and Loss-Adjusted Load	4,811,434
GHG Emissions Intensity (lbs CO₂e/MWh)	2
■ Renewables and Zero-Carbon Resources	100%
■ Fossil Fuels	0%
Biomass & Biogas	4%
Geothermal	2%
Eligible Hydroelectric	6%
Solar	42%
Wind	21%
RPS Eligible Renewables - Subtotal	75%
Large Hydroelectric	25%
Nuclear	0%
Emerging Technologies	0%
Other	0%
Natural Gas	0%
Coal & Petroleum	0%
Unspecified Power - Total	0%
Retail Sales Covered by Retired Unbundled RECs	0%

2025 Draft PCL: Green Access Portfolio

Emissions, Power Sources, Unbundled RECs	GreenAccess
Retail Sales and Loss-Adjusted Load	26,942
GHG Emissions Intensity (lbs CO₂e/MWh)	0
■ Renewables and Zero-Carbon Resources	100%
■ Fossil Fuels	0%
Biomass & Biogas	0%
Geothermal	0%
Eligible Hydroelectric	0%
Solar	100%
Wind	0%
RPS Eligible Renewables - Subtotal	100%
Large Hydroelectric	0%
Nuclear	0%
Emerging Technologies	0%
Other	0%
Natural Gas	0%
Coal & Petroleum	0%
Unspecified Power - Total	0%
Retail Sales Covered by Retired Unbundled RECs	0%

Fiscal Impacts:

There are no fiscal impacts associated with this item.

Recommendation:

Recommend the Board of Directors adopt *proposed* Resolution 2026-08 approving MCE's 2025 Power Source Disclosure Annual Report and attesting, to the best of its knowledge and belief, to the veracity of information presented therein.

Attachment A

MCE 2025 Annual PSD Report Template

Due to file size and complexity, this document can be downloaded by clicking here: [LINK](#). Once downloaded, this file can be accessed via your computer's downloads folder.

RESOLUTION 2026-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY APPROVING AND ATTESTING TO THE VERACITY OF THE INFORMATION PRESENTED IN MCE's 2025 POWER SOURCE DISCLOSURE ANNUAL REPORT

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

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Fairfield, the City of Hercules, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, California Public Utilities Code Section 398.1 requires all retail suppliers of electric energy, including MCE, to disclose to their customers "accurate, reliable, and simple-to-understand information on the sources of energy, and the associated emissions of greenhouse gases, that are used to provide electric services" to their respective customers, referred to as the "Power Content Label"; and

WHEREAS, California Public Utilities Code Section 398.5 and associated California Energy Commission (CEC) regulations require all retail suppliers of electric energy, including MCE, to report to the CEC, on or before June 1 of each year, purchases from specified and unspecified sources as well as the disclosure made to customers pursuant to California Public Utilities Code Section 398.4, collectively referred to as the "Power Source Disclosure Annual Report"; and

WHEREAS, MCE staff completed and submitted such Power Source Disclosure Annual Report to the CEC in compliance with applicable law and CEC regulations; and

WHEREAS, the applicable CEC regulations require retail suppliers, including MCE, to have an auditor prepare a report by October 1 of each year validating the retail supplier's Power Source Disclosure Annual Report (referred to in CEC regulations as the "annual resource report"). Such CEC regulations also exempt a retail supplier that is a public agency from the audit requirements if the public agency's governing board approves the submission of an attestation on the veracity of the Power Source Disclosure Annual Report; and

WHEREAS, MCE Staff is presenting to the MCE Board of Directors for its review MCE's 2025 Power Source Disclosure Annual Report; and

WHEREAS, the MCE Board of Directors wishes to attest, to the best of its knowledge and belief, to the veracity of information presented in MCE's 2025 Power Source Disclosure Annual Report.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of MCE does hereby resolve, determine, and order as follows:

SECTION 1: The MCE Board of Directors approves MCE's 2025 Power Source Disclosure Annual Report.

SECTION 2: The MCE Board of Directors attests, to the best of its knowledge and belief, to the veracity of information presented in MCE's 2025 Power Source Disclosure Annual Report.

SECTION 3: The MCE Board of Directors authorizes MCE Staff to submit this Resolution 2026-08 as the attestation of MCE's 2025 Power Source Disclosure Annual Report to the California Energy Commission.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 17th day of September, 2026, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
County of Contra Costa				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Hercules				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				

Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE



2025 Power Source Disclosure Attestation

Technical Committee Meeting
September 4, 2026

Today's Meeting

- Seeking recommendation for the Board to approve and attest to the veracity of MCE's 2025 Power Source Disclosure (PSD) Annual Report via *proposed* Resolution 2026-08.
 - MCE must annually submit a PSD Report to the California Energy Commission (CEC) disclosing the electricity it used in the previous calendar year.
 - MCE must also provide the CEC with a Board attestation as to the veracity of the information included in its PSD Report by October 1, 2026.

What is the Power Source Disclosure Program?

- Administered by the California Energy Commission
- Ensures California electricity consumers receive energy source and greenhouse gas information on the electricity used by their retail suppliers.
- Requires all electricity retail suppliers to submit an annual report including:
 - Annual retail sales of each portfolio
 - All specified power purchases by resource type
 - Purchases of unspecified power
 - Energy toward charging/discharging storage resources
 - Loss-adjusted load (beginning 2026)



What is the Power Content Label (PCL)?

- A “nutrition label” for each electricity provider
- Discloses the electricity used to meet retail sales *for the previous year*, including associated GHG emissions
 - Aggregated on an **annual** basis
 - Created from the PSD Report submission
- Broken down by portfolio (Light Green, Deep Green, Local Sol, Green Access)
 - The electricity provider creates a “power mix” for each portfolio, aggregated by resource type
 - Power mixes are mutually exclusive

What's reflected in the PCL?

The PCL reflects

- Energy delivered to meet retail sales on an annual basis
- Power mixes for each portfolio
 - Associated GHG intensities
- Loss-adjusted load
- Unspecified power, if used to meet retail sales
 - Partitioned by fossil fuel and renewable/zero-carbon resources (to be calculated by the CEC)

The PCL does *not* reflect

- Resource Adequacy only contracts
- Hourly energy or emissions data
- Energy beyond what was used to meet annual retail sales (i.e., oversupply)

MCE's process for completing the PSD Report

Data Tracking and Compiling (PEA & MCE Staff)

WREGIS database, contracts & settlement data, meter data

Quality Check and Verification (MCE Staff)

Expected volumes, timing, and facilities specified in contracts

Quality Assurance (MCE & CEC Staff)

Multiple reviewers, pre-screened by CEC staff

PSD Annual Report Template Submission

Respond to CEC feedback, seek attestation, and await PCL

MCE's Draft 2025 PCL

- Displays each of MCE's four portfolios/product offerings
- Shows energy delivered to meet retail sales, now including line losses
- Reflects that all four portfolios met their retail sales with 100% renewable and zero-carbon resources

2025 PCL Data*					
Emissions, Power Sources, Unbundled RECs	Deep Green	LocalSol	LightGreen	GreenAccess	Total Loss-Adjusted Load
Retail Sales and Loss-Adjusted Load	465,344	2,123	4,810,857	26,942	5,561,551
GHG Emissions Intensity (lbs CO ₂ e/MWh)	0	0	2	0	2
■ Renewables and Zero-Carbon Resources	100%	100%	100%	100%	100%
■ Fossil Fuels	0%	0%	0%	0%	0%
Biomass & Biogas	0%	0%	4%	0%	3%
Geothermal	0%	0%	2%	0%	2%
Eligible Hydroelectric	0%	0%	6%	0%	5%
Solar	50%	100%	42%	100%	41%
Wind	50%	0%	21%	0%	22%
RPS Eligible Renewables - Subtotal	100%	100%	75%	100%	74%
Large Hydroelectric	0%	0%	25%	0%	22%
Nuclear	0%	0%	0%	0%	5%
Emerging Technologies	0%	0%	0%	0%	0%
Other	0%	0%	0%	0%	0%
Natural Gas	0%	0%	0%	0%	0%
Coal & Petroleum	0%	0%	0%	0%	0%
Unspecified Power - Total	0%	0%	0%	0%	0%
Retail Sales Covered by Retired Unbundled RECs	0%	0%	0%	0%	-

*Preliminary values, to be finalized by the CEC (mid-September)

Future changes to the PSD Report

Hourly reporting

- Starting in 2028 (for reporting year 2027)
- For each hour of the year, electricity providers will report:
 - Procurements of delivered electricity
 - Loss-adjusted load
 - Charging/discharging energy for storage resources
- Procurements will be stacked for comparison with loss-adjusted load
- **Hourly reporting will not be reflected on the PCL. The PCL will continue to reflect information on an annual basis.**

Staff Recommendation

Staff recommends the Technical Committee recommend the Board of Directors adopt *proposed* Resolution 2026-08 at the September 17, 2026 Board of Directors Meeting approving MCE's 2025 Power Source Disclosure Annual Report and attesting, to the best of its knowledge and belief, to the veracity of information presented therein.

Thank you!



mceCleanEnergy.org
info@mceCleanEnergy.org



September 4, 2026

TO: MCE Technical Committee
FROM: Jesica Brooks, Lead Board Clerk and Executive Assistant
RE: Member Requests for Future Agenda Items (Agenda Item #07)

Dear Technical Committee Members:

Summary:

Committee members are invited to submit topics they would like to discuss at upcoming Technical Committee meetings. Staff has compiled the requests received to date.

Topic	Expected Timing for the Committee
Renewable Energy Targets for Light Green	December 2026

The listed topics have been provided for the Committee's review. The Committee may discuss, prioritize, and provide direction regarding the scheduling of these items on future meeting agendas.

Fiscal Impacts:

None.

Recommendation:

No Action needed. This report serves to provide the Committee with a continuing list of topics for future meetings presented by Committee Members in meetings.