



**REGULAR MEETING of the Board of Directors of the  
Clean Power Alliance of Southern California  
Thursday, October 3, 2019  
2:00 p.m.**

Wallis Annenberg Building at Exposition Park  
Muses Room  
700 Exposition Park Drive  
Los Angeles, CA 90037

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Rigo Garcia at least two (2) working days before the meeting at [rgarcia@cleanpoweralliance.org](mailto:rgarcia@cleanpoweralliance.org) or (213) 713-5995. Notification in advance of the meeting will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.*

**PUBLIC COMMENT POLICY:** *The General Public Comment item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today's agenda. Public comments on matters on today's Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. As with all public comment, members of the public who wish to address the Board are requested to complete a speaker's slip and provide it to Clean Power Alliance staff at the beginning of the meeting but no later than immediately prior to the time an agenda item is called.*

*Each speaker is limited to two (2) minutes (in whole minute increments) per agenda item with a cumulative total of five 5 minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to Policy No. 8 – Public Comment for additional information.*

***In addition, members of the Public are encouraged to submit written comments on any agenda item to [PublicComment@cleanpoweralliance.org](mailto:PublicComment@cleanpoweralliance.org). To enable an opportunity for review, written comments should be submitted at least 72 hours but no later than 24 hours in advance of the noticed Board meeting date. Any written materials submitted thereafter will be distributed to the Board at the Board meeting. Any written submissions must specify the Agenda Item by number, otherwise they will be considered General Public Comment.***

*Members of the public may also participate in this meeting remotely at the following addresses:*

Calabasas City Hall – Council Conference Room  
100 Civic Center Way, Calabasas, CA 91301

Ventura County Government Center  
Channel Islands Conference Room, 4th Floor Hall of Administration  
800 South Victoria Avenue, Ventura, CA 93009

Whittier City Hall – Admin Conference Room  
13230 Penn Street, Whittier, CA 90602

**I. WELCOME AND ROLL CALL**

**II. GENERAL PUBLIC COMMENT**

**III. CONSENT AGENDA**

1. Approve Minutes from September 5, 2019 Board of Directors Meeting.
2. Appoint Rigoberto Garcia as Board Secretary for Clean Power Alliance.
3. Receive and file the Risk Management Team (RMT) Quarterly Report from July through September 2019.
4. Authorize the Executive Director to execute Task Order TEA-#4 with The Energy Authority (TEA) for Power Procurement and Advisory Services for the period of October 1, 2019 to June 30, 2020 for a not-to-exceed budget of \$600,000.

5. Appoint one member to the Community Advisory Committee for 2019-20 representing the South Bay Region.
6. Bylaws Amendment No. 1
  - a) Approve the Bylaws amendment regarding participation of non-elected Alternate Directors in Closed Session;
  - b) Provide 30-day notice of CPA's intent to amend the Bylaws; and
  - c) Direct the General Counsel to return with an implementing resolution for adoption of the amended Bylaws effective January 1, 2020 at the next duly-noticed Board meeting following the 30-day notice period.
7. Approve proposed amendment to Policy No. 7 Net Energy Metering (NEM), regarding procedures for processing unclaimed returned checks.
8. Receive and file an update from the September 12, 2019 Community Advisory Committee meeting.
9. Receive and file Letter Agreement with River City Bank updating loan covenants.

#### **IV. REGULAR AGENDA**

10. Presentation on Local Programs Goals and Priorities Strategic Planning Project.
11. Approve and authorize the Executive Director to execute Amendment No. 1 to the agreement between Calpine and CPA and approve and authorize the Executive Director to execute an agreement with Calpine and Olivine, Inc. for Distributed Energy Resources (DER) Pilot Program services.
12. Presentation on Long-Term Power Contracting status.
13. Approve a 20-year power purchase agreement (PPA) with the Mohave County Wind Farm, LLC (Mohave Wind) project, and authorize the Executive Director to execute the Mohave Wind PPA.

#### **V. MANAGEMENT UPDATE**

#### **VI. COMMITTEE CHAIR UPDATES**

Director Lindsey Horvath, Chair, Legislative & Regulatory Committee

Director Julian Gold, Chair, Finance Committee

Director Carmen Ramirez, Chair, Energy Planning & Resources Committee

**VII. BOARD MEMBER COMMENTS**

**VIII. REPORT FROM THE CHAIR**

**IX. ADJOURN – TO REGULAR MEETING DECEMBER 5, 2019**

***Public Records:** Public records that relate to any item on the open session agenda for a regular Board Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Board. The Board has designated Clean Power Alliance, 555 W. 5th Street, 35th Floor, Los Angeles, CA 90013, as the location where those public records will be available for inspection. The documents are also available online at [www.cleanpoweralliance.org](http://www.cleanpoweralliance.org).*

REGULAR MEETING of the Board of Directors of the  
Clean Power Alliance of Southern California  
Thursday, September 5, 2019 2:00 p.m.

**MINUTES**

Conference Center at Cathedral Plaza  
Conference Room C – 2<sup>nd</sup> Floor  
555 W. Temple Street  
Los Angeles, CA 90012

Calabasas City Hall – Council Conference Room  
100 Civic Center Way, Calabasas, CA 91301

Ventura County Government Center  
Channel Islands Conference Room, 4th Floor Hall of Administration  
800 South Victoria Avenue, Ventura, CA 93009

Whittier City Hall – Admin Conference Room  
13230 Penn Street, Whittier, CA 90602

**I. WELCOME AND ROLL CALL**

Chair Diana Mahmud called the meeting to order at 2:05 p.m.

Interim Board Secretary Christian Cruz conducted roll call.

<b>Roll Call</b>				
1	<b>Agoura Hills</b>	Deborah Klein Lopez	Director	Remote
2	<b>Alhambra</b>	Jeff Maloney	Alternate	Present
3	<b>Arcadia</b>	Sho Tay	Director	Present
4	<b>Beverly Hills</b>	Julian Gold	Director	Present
5	<b>Calabasas</b>	John Bingham	Alternate	Remote

6	<b>Camarillo</b>	Tony Trembley	Director	Remote
7	<b>Carson</b>	Reata Kulcsar	Alternate	Present
8	<b>Claremont</b>	Jennifer Stark	Alternate	Present
9	<b>Culver City</b>	Meghan Sahli-Wells	Director	Present
10	<b>Downey</b>	Sean Ashton	Director	Present
11	<b>Hawaiian Gardens</b>	Ramie Torres	Alternate	Remote
12	<b>Hawthorne</b>	Doug Krauss	Alternate	Present
13	<b>Los Angeles County</b>	Sheila Kuehl	Director	Present
14	<b>Malibu</b>	Skylar Peak	Director	Present
15	<b>Manhattan Beach</b>	Nancy Hersman	Director	Present
16	<b>Moorpark</b>	Janice Parvin	Director	Remote
17	<b>Ojai</b>	Michelle Ellison	Alternate	Remote
18	<b>Oxnard</b>	Carmen Ramirez	Director	Remote
19	<b>Paramount</b>	Adriana Figueroa	Alternate	Remote
20	<b>Redondo Beach</b>	John Gran	Alternate	Present
21	<b>Rolling Hills Estates</b>	Judy Mitchell	Alternate	Present
22	<b>Santa Monica</b>	Kevin McKeown	Director	Present
23	<b>Sierra Madre</b>	John Harabedian	Director	Present
24	<b>Simi Valley</b>	Samantha Argabrite	Alternate	Remote
25	<b>South Pasadena</b>	Diana Mahmud	<b>Chair</b>	Present
26	<b>Temple City</b>			Absent
27	<b>Thousand Oaks</b>	Jay Spurgin	Alternate	Remote
28	<b>Ventura</b>	Christy Weir	Director	Remote
29	<b>Ventura County</b>	Linda Parks	<b>Vice-Chair</b>	Present
30	<b>West Hollywood</b>	Lindsey Horvath	Director	Present
31	<b>Whittier</b>	Vicki Smith	Alternate	Remote

## **II. GENERAL PUBLIC COMMENT**

Tim Swanson, Sterling Analytics, discussed incentives for customers to change from less energy efficient lighting to LED lighting. Mr. Swanson indicated rebates are available to select jurisdictions and are good until December 31, 2019.

Clay Sandidge, Muni-Fed Energy, endorsed Sterling Analytics and discussed the merits of the program.

There were no public comments at remote locations.

## **III. CONSENT AGENDA**

1. Approve Minutes from July 18, 2019 Board of Directors Meeting
2. Authorize the Executive Director to Execute Task Order No. 6 between CPA and Ascend Analytics for Administration of CPA's 2019 Long-Term Clean Energy Request for Offers (RFO)
3. Authorize the Executive Director to Execute Amendment No. 1 to the Legal Services Agreement between CPA and Clean Energy Counsel Expanding the Scope of Services to Include Legal Support for CPA's 2019 Energy Procurement, Including CPA's Long-Term Clean Energy Request for Offers (RFO), and to Add Two Potential Additional Project Negotiations
4. Adopt Resolution 19-09-013 to Delegate Authority to the Executive Director to Attest to the Accuracy of CPA's 65% Renewable Product Power Source Disclosure
5. Appoint Members to the Community Advisory Committee
6. Ratify CPA's Amended Position on SB 155 (Bradford) from "Oppose, unless amended" to "Neutral"

Chair Mahmud indicated that on Item 3 there was an inadvertent discrepancy between the written and numeric value on Amendment No. 1 to Clean Energy Counsel Professional Legal Services Agreement Exhibit A), under 'Procurement Services' the "Initial Authorized Budget for Procurement Services" is \$15,000, and the "Procurement Services Collar" is \$18,000. Chair Mahmud asked that makers of the motion include the change as an amendment.

**Motion:** Director Horvath, West Hollywood

**Second:** Director Ashton, Downey

**Vote:** Items 1 through 6 were approved unanimously by roll call vote, noting the amendment to Item 3.

By order of the Chair, the Agenda was rearranged to receive the presentation from Southern California Edison next.

**VI. PRESENTATION FROM SOUTHERN CALIFORNIA EDISON ON THE PUBLIC SAFETY POWER SHUTOFF PROGRAM**

Luis Lara, SCE Outage Communication, made a presentation on Wildfire mitigation strategies; microclimates that foster year-round conditions for fire seasons; vegetation management; bolstering situational awareness capabilities; enhancing operational practices; hardening the electric grid; and implementation of Public Safety Power Shutoff program.

Vice-Chair Kuehl asked what measured conditions need to be met to de-energize an area. Mr. Lara indicated that it was a recipe that considers dry vegetation, fire fuel level, humidity, and circuitry resistance to wind factors. Vice-Chair Kuehl discussed the Woolsey Fire and the community's interest in SCE resources and communication options.

Vice-Chair Park discussed the reliability of receiving notices from SCE regarding upcoming de-energization that did not occur; and asked for recommendations on what to do with the information that is provided. Mr. Lara indicated that Edison need to bolster its communication to inform agencies on condition changes that may advance or remove de-energization to an area.

Director Ramirez asked what resources are available for individual that need medical/emergency operations. Mr. Lara indicated that Medical Baseline Critical Care Customers are tracked and field representative perform wellness check if no response is received from the individual. Mr. Lara further indicated that they offer bilingual support for customer communication.

Director Peak requested a meeting for Malibu to get specific threshold requirements for the City to enable their residents prepare accordingly. Director Peak also discussed increasing the communication strategy to prevent chaos.



Chair Mahmud asked when Edison believes they will finalize the Public Safety Power Shutoff program schedule. Mr. Lara indicated that Edison had completed identifying 1,300 high priority circuits for the program and the list is available for distribution, enabling jurisdictions to find out what circuits may be in their area. Chair Mahmud indicated receiving conflicting information on revisions to the list and further asked about community engagement on Public Safety Power Shutoff programs and SCE's upcoming rates in relation to hardening facilities. Mr. Lara indicated engagement is ongoing but specific meetings can be arranged upon request. In relation to costs for hardening facilities, Mr. Lara said he would transmit the number to CPA staff when it became available.

Remote location Calabasas asked how jurisdictions would know which zone they fall into and whether camera/meteorology data is available to the public. Mr. Lara indicated cities can have one on one meetings to get the details on their zone and that meteorology data is not available to the public but some cameras are available online for viewing.

Remote location Thousand Oaks asked what happens to cooling centers during heat waves and whether there is a program to provide power using generators. Mr. Lara indicated they can segregate circuits to lower impacts on mission critical areas.

#### **IV. REGULAR AGENDA**

##### **Action Items**

7. Adopt Resolution No. 19-09-014 to Approve Adjusted 2019 Rates for Phase 1 & 2 Non-Residential Customers, Resolution No. 19-09-015 to Approve Adjusted 2019 Rates for Phase 4 Non-Residential Customers, and Resolution No. 19-09-016 to Approve Adjusted 2019 Rates for Phase 3 Residential Customers

Ted Bardacke, Executive Director, and Matthew Langer, Chief Operating Officer, presented the staff report. Mr. Langer discussed the underlining reason for proposed rate changes occurred because on July 26, 2019, Edison implemented a rate change for its general rate case for the last period resulting in a net change of approximately 3% decrease to all CPA and Edison's bundled customers. He further explained that CPA customers thereafter realized an additional decrease to the Power Charge Indifference Adjustment (PCIA) known as the exit fee. Mr. Langer indicated the current average customer bills are now less than comparison targets that were adopted in June 2019.

Mr. Langer provided a staff recommendation of a small generation rate adjustment consisting of between one and two tenths of a cent per kwh to maintain the same rate comparisons that were adopted by the Board in June 2019. Mr. Langer indicated the adjustment would provide approximately \$4-5 million over the next four months and provide a needed cushion to absorb load uncertainty and lower CPA risk in the eyes of energy suppliers and creditors. Mr. Langer further discussed the impacts to customers with specific charges to invoices in comparison to CPA reserve benefits and reiterated that the proposed changes are within the 1% rate adopted in June. Mr. Langer indicated CPA is aware of two upcoming rate changes by SCE, which are projected to occur in January 2020 and in April 2020. Staff is considering a similar approach to not immediately changing CPA rates on short notice but spending more time to analyze the impacts of SCE rate changes.

Remote location Whittier asked if there was any upcoming remedy at the State level to minimize the amount of times a utility can change its rates annually. Mr. Langer responded that this is an example where Edison may have been used to executing rates in a specific manner and it's becoming more transparent now that CPA is paying closer attention to their practices, but there currently is nothing in the pipeline to change way they conduct rate changes.

Vice-Chair Kuehl discussed the current practice of continually adjusting rates to keep them aligned with SCE and asked if there is consideration to change to a different model for long term planning. Mr. Langer indicated staff is working on residential time of use programs which would initiate a further discussion of whether CPA would set rates differently. Mr. Langer also indicated that with the rate change in January 2020, CPA could evaluate whether it make sense to follow to the current model. Mr. Bardacke provided conceptual ideas indicating that CPA could implement yearly rates that are stable but the Board would have to accept that at times CPA could be more or less expensive than SCE and be aware of unintended consequences. Secondly, Mr. Bardacke indicated that other CCA's are decoupling rate changes and shifting to cost-of-service based rates. Mr. Bardacke discussed the risk associated with this model is that it becomes harder to compare rate classes/tiers and could further create confusion which may lead to opt-outs.

Director Ashton asked how much revenue CPA would realize with the proposed rate change and how it would be allocated. Mr. Langer answered that projections are between \$4-5 million and indicated that during the discussion in the Finance Committee, the Committee considered the

potential revenue as a cushion for unknown conditions that include rate fluctuation and market trends that could shift unexpectedly.

Director Gold stated that the Finance Committee sought to balance the benefit to customers while preserving the integrity of the organization by being fiscally responsible in light of past and current debt obligations and establishing a reserve that would strengthen CPA.

Alternate Director Mitchell asked about the Los Angeles County \$10 million loan and when it becomes due. Mr. Bardacke indicated that the loan becomes due at the end of September 2020 and the loan provides context on how the proposed rate adjustment becomes a strong consideration while still providing a rate decrease to customers.

There were no public comments made.

Chair Mahmud reminded the Board that CPA completed service roll out three months ago and is still in 'startup mode'. She indicated the importance of establishing a reserve in order to pursue programs that are beneficial to customers.

**Motion:** Director Gold, Beverly Hills

**Second:** Director McKeown, Santa Monica

**Vote:** Adopted Resolution No. 19-09-014; Resolution No. 19-09-015; and Resolution No. 19-09-016 unanimously by roll call vote.

8. Adopt Resolution 19-09-017 to Approve Amendments to the CPA Employee Handbook

Vice-Chair Kuehl moved staff recommendation to adopt Resolution No. 19-09-017 and approve staff's recommended proposals for employee benefits.

Mr. Bardacke presented the staff report regarding changes to the employee handbook including employee benefits. Mr. Bardacke indicated that as CPA crosses the 25-employee threshold, additional Federal and State regulatory requirements would begin to apply. Mr. Bardacke discussed the importance of employee benefits to attract and retain staff and specifically addressed retirement, health care and transportation allowance.

Mr. Bardacke provided a survey analysis of benefits by comparing CCA's and outlined three options for each of the retirement, health care, and transportation allowance categories. Mr. Bardacke outlined the Executive Committee's recommendation for each category indicating the benefits of each proposal. First, for retirement benefits the Executive Committee recommended Option #3 which provides up to a 10% contribution

comprised of a 6% direct contribution and 4% match; any CPA contribution is owned by the employee over three years in equal amounts. Mr. Bardacke indicated that this three-year ownership cycle would incentivize employee retention and prevent turnover. Mr. Bardacke specified employees that left before the three-year mark would have the CPA contribution pro-rated annually at a rate of one-third for every full year fulfilled up until the third-year.

Second, Mr. Bardacke discussed the health care category indicating that one of the biggest fiscal challenges is addressing employees with dependents. Mr. Bardacke outlined the Executive Committee's recommendation of Option #2 for health care that includes: Full HDV coverage for employee at Kaiser Platinum level; \$0 co-pay for dependent coverage; Kaiser Platinum level allowance for employee and dependents (less any co-pay) for PPO plans; Co-pay level to be determined annually; and providing a \$500 cash out program. Mr. Bardacke indicated that CPA reserves the right to impose cost sharing if appropriate. Third, Mr. Bardacke discussed transportation allowance indicating most employees take public transportation and that CPA does not provide free parking for employees. Mr. Bardacke outlined the Executive Committee's recommendation for Option #1 to provide \$200/month for use of any non-auto mode for commuting subject to proper documentation submittal. Lastly, Mr. Bardacke presented the Life and Disability insurance benefit that would allow CPA to offer employee-paid voluntary supplemental life insurance options. Mr. Bardacke discussed other changes in the employee handbook that included parental leave, and potential for having non-exempt employees in the future. He further discussed that if the changes to the Employee Handbook were approved, staff would return with the next step that includes official job classifications and salary ranges.

Remote location Calabasas asked what the cost is associated with the retirement proposal. Mr. Bardacke answered that staff projected having 32 staff members by the end of the fiscal year and annualized figures at current level and based on projections retirement would go from \$130,000 to \$430,000; for healthcare cost would go from \$180,000 to \$280,000 for Option #2.

Alternate Director Mitchell recommended that transportation allowances be processed as an invoice to cover the actual expense of transportation instead of the flat fee of \$200. Vice-Chair Kuehl inquired what the recommendation would be for those who walk to work. Director Mitchell indicated a flat fee may be warranted in those scenarios.

Remote location Simi Valley indicated Option#3 in health care benefits would produce a stable cost projection and inquired about the differences

in cost between options. Mr. Bardacke answered that the difference between Options #1, 2, and 3 was fiscally minimal but largely beneficial for employees to know they had dependent coverage. Mr. Bardacke clarified that payouts for Option #3 would be up to \$1,200.

Chair Mahmud stated that selecting an option that provides full coverage allows the Board not to have to revisit the topic as often since health care premiums are expected to grow annually.

Vice-Chair Kuehl indicated support for rewarding people who commit to not driving nor polluting. Vice-Chair Kuehl provided an example of unintended consequences of job classifications descriptions that inadvertently promote a specific gender to apply for a position and recommended staff look at future classifications through that lens.

Chair Mahmud clarified that under Option #1 for the transportation allowance, the compensation would be up to \$200 and not a flat payout.

Director Horvath commented that job titles should commensurate what the position does and suggested CPA look into AQMD funding to offset the transportation allowance.

Director Ramirez discussed local budget cuts and turnover rates because of high workloads and suggested benefits be competitive and nurturing to prevent high turnover rates.

Alternate Director Maloney commended staff for committing to alternative transportation and supports a flat fee for walkers and riders who deal with dangers and weather on their commute.

Director McKeown seconded Vice-Chair Kuehl's motion.

Chair Mahmud indicated there were no public comments on the matter.

Chair Mahmud sought a friendly amendment to include a flat allowance for walkers and riders with an administrative tool for affirmation that for the pay period the employee used no automobile to commute to work. The maker and seconder of the motion accepted the amendment.

Mr. Bardacke discussed the variety of permutations that can occur administratively to carry out a transportation allowance and suggested going with the majority of the time the person commuted without an automobile as a way to move forward.

Director McKeown suggested staff administratively work out the documentation process for transportation allowance and evaluate it for a year period and return to the Board with findings. By consensus, the Board agreed.

**Motion:** Vice-Chair Kuehl, Los Angeles County

**Second:** Director McKeown, Santa Monica

**Vote:** Adopted Resolution No. 19-09-017 approving changes to the Employee Handbook, selecting staff's recommendation for retirement, health care and transportation allowance with an amendment for walking commuters and authorizing Life and Disability insurance by a unanimous roll call vote.

## **V. MANAGEMENT UPDATE**

Mr. Bardacke provided an update on SCE billing delays where customers had either not been billed or received incomplete invoices indicating the problem was amongst all CCAs. SCE has resolved about 80% of the billing issues with approximately 7,000 to 15,000 accounts outstanding. CPA has been able to measure progress by the number of phone calls the call center receives. Mr. Bardacke stated one point of interest is that just over 1% of people who called into the call center opted out and other customers took the opportunity to change their rate to a lower tier.

Mr. Bardacke announced that CPA hired a Board Secretary, Rigoberto Garcia, and a Director of Regulatory Affairs, CC Song.

Mr. Bardacke outlined projects for the fourth quarter that include benefit opportunities for customers including long-term Purchase Power Agreements, local programs strategic planning process, Distributed Energy Resources pilot program, and time of use transition for residential customers. Lastly, Mr. Bardacke reminded the Board that the CalCCA Annual Meeting is in Redondo Beach on November 6<sup>th</sup> and 7<sup>th</sup> which may result in the Board meeting moving to an alternate date.

## **VII. COMMITTEE CHAIR UPDATES**

Director Horvath, Legislative & Regulatory Committee Chair, reported on the legislature wrapping up and looking ahead for the next legislative year. Director Horvath indicated the California Contract Cities Association will have a fall seminar and there will be a panel on CCA's where CPA will have representation. Director Horvath discussed recent natural gas correspondence and inquired whether the Board would be interested in taking a position on electrification and natural gas. Director Horvath requested that staff send out information on this topic. Director McKeown indicated Santa Monica would soon be considering the item on building electrification.

Director Gold, Finance Committee Chair, reported on awarding a financial audit contract to Baker Tilly Virchow Kraus, and indicated that findings would be presented to the Executive Committee and then the Board.

Director Ramirez, Energy Planning & Resources Committee Chair, reported on the start of the Long-Term Clean Energy Requests for Offer and the Committee's review of a potential wind resources project and Integrated Resource Plan.

**VIII. BOARD MEMBER COMMENTS**

None.

**IX. REPORT FROM THE CHAIR**

Chair Mahmud welcomed new Board Member Vicki Smith from Whittier and informed the Board of information on the back of the agenda that provides resources on wildfire cameras and information. Chair Mahmud asked Board Members if they have a request to place an energy presenter on the agenda to please let staff know.

**X. ADJOURN**

Chair Mahmud adjourned the meeting at 4:33 p.m.



## Staff Report – Agenda Item 2

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Nancy Whang, General Counsel  
**Approved by:** Ted Bardacke, Executive Director  
**Subject:** Board Secretary Appointment  
**Date:** October 3, 2019

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### **RECOMMENDATION**

Appoint Rigoberto Garcia as Board Secretary for Clean Power Alliance.

### **BACKGROUND**

The previous Board Secretary resigned her position effective April 23, 2019 and CPA staff subsequently began a recruitment for a permanent Board Secretary. At its May 2, 2019 meeting, the Board appointed Christian Cruz to serve as Interim Board Secretary until a permanent Board Secretary was appointed.

In conformance with Joint Powers Agreement Section 5.2, the Board shall appoint a Secretary who is responsible for keeping minutes and all other official records of the Authority. CPA conducted a recruitment for the Board Secretary position and recommends appointment of Rigoberto Garcia as Board Secretary.



## Staff Report – Agenda Item 3

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Matthew Langer, Chief Operating Officer  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Quarterly Risk Management Report  
**Date:** October 3, 2019

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### **RECOMMENDATION**

Receive and file the Risk Management Team (RMT) Quarterly Report from July through September 2019.

### **SUMMARY**

The CPA's Energy Risk Management Policy (ERMP) establishes a staff-level Risk Management Team (RMT) responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. The ERMP requires quarterly reporting to the Board on the activities, projected financial performance, and general market outlook facing CPA.

The Quarterly RMT Report for the period covering July 1, 2019 through September 30, 2019 (Q3) is attached.

The RMT also reports ERMP compliance to the Finance and Energy Planning & Resources Committees on a monthly basis.

**Attachment:** 1) RMT Report for Q3 2019



## **Quarterly Report of Risk Management Team July 1, 2019 through September 30, 2019 (Q3 2019)**

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### **I. Introduction**

The Board of Directors of Clean Power Alliance (CPA) approved an Energy Risk Management Policy (ERMP) at its July 12, 2018 meeting, which provides the framework for conducting procurement activities in a manner that maximizes the probability of CPA meeting its portfolio, reliability, and financial goals.

The ERMP requires quarterly reporting to the Board on the activities, projected financial performance, and general market outlook facing CPA. The Risk Management Team (RMT)<sup>1</sup> submits this report in accordance with this requirement. The RMT also reports on ERMP compliance to both the Finance Committee and Energy Planning & Resources Committee on a monthly basis.

### **II. Risk Management Team Activities**

The RMT is responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. The primary goal of the RMT is to ensure that the procurement activities of CPA are executed within the guidelines of the ERMP and are consistent with Board directives. A number of business practices are prescribed in the ERMP. What follows is a summary of CPA's compliance with these practices as outlined in the Policy.

#### **A. ERMP Acknowledgement Form**

It is the policy of CPA that all CPA Representatives participating in any activity or transaction within the scope of the ERMP shall sign, on an annual basis or upon any revision, a statement acknowledging compliance with the ERMP. Execution of the ERMP Acknowledgement Form was completed by Board members, relevant CPA staff, and relevant consultants.

There are no existing or potential conflicts of interest to report. All business has been conducted consistent with applicable laws and regulations.

#### **B. Transaction Types**

The ERMP approved in July 2018 and amended in July 2019 includes a list of approved transaction types. All products that have been purchased or sold by CPA during the current quarterly periods represent an approved transaction type as listed in Appendix C of the ERMP.

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<sup>1</sup> The RMT is comprised of CPA's Executive Director, Chief Operating Officer, Chief Financial Officer, and Director of Power Planning and Procurement.

### C. Counterparty Suitability

The ERMP requires that all counterparties with whom CPA transacts must be reviewed for creditworthiness and assigned a credit limit. A formal Counterparty Credit Protocol document that describes the method for evaluating counterparties and establishing a credit limit was developed by CPA's Chief Financial Officer and the Portfolio Manager. The Protocol was approved by the Executive Director, in consultation with the RMT, and enacted in Q1 2019.

Pursuant to the ERMP, no counterparty credit limit may exceed \$40 million. CPA is fully compliant with this obligation, and there are no credit limit violations to report for the previous quarter.

### D. System of Record

As required by the ERMP, all transactions are being stored in CPA's Portfolio Manager's (currently TEA) trading and risk management system. Similarly, all transaction approvals are being logged and stored on TEA's servers, which information is being made available to CPA staff via a secure web portal. The transaction record also includes the confirmation letters for each transaction.

### E. Position Tracking and Management Reporting

In order to manage risk, the ERMP requires the regular production of various reports. The current status of each report required by policy follows:

- Financial Model Forecast: CPA continues to refine its financial model. The financial model captures historical and projected revenues and energy and operating costs and produces various financial reports and forecasts on an accrual and cash flow basis. The model imports load forecast data and energy contract details from TEA's load forecasting and deal capture systems respectively, MRW's revenue model, the accounting system maintained by Maher Accountancy, and forward prices from the ICE Data Service. CPA's Manager of Financial Planning and Analysis has day to day responsibility for updating and enhancing the model.
- Net Position Report: Short- and long-term net position reports are in production and directly linked to TEA's trade capture system. The short-term net position report updates daily and incorporates the current weather outlook for the next 60 days to show net positions for the current and next months. The long-term net position report assumes normal weather and shows net positions through the balance of the current year and prompt four years.
- Counterparty Credit Exposure: CPA is fully compliant with the credit policies included in the ERMP. CPA is receiving daily updates of counterparty credit exposures on both a notional and mark-to-market basis.
- Monthly Risk Analysis: The ERMP requires both stress testing of financial results, as well as probability-based assessments of future financial projections. CPA implemented a risk analysis tool to stress test financial results and validate potential hedging transactions. This model continues to be refined; CPA anticipates being able to implement probability-based risk analysis in the near future.
- Quarterly Board Report: subject of this report.

## F. Delegation of Authority

All executed transactions during the current period have been approved consistent with the Delegation of Authority outlined in Section 5 of the ERMP.

## G. Limit and Other Compliance Violations

The ERMP requires that transaction volumes should not be executed that exceed the requirements of meeting CPA's load (energy and capacity), renewable and/or carbon free energy requirements. The following policy deviations have been reported to the Finance Committee and Energy Planning & Resources Committee:

Policy Deviation	Required Action	Reported
None in Q3 2019	N/A	N/A

## H. Training

The ERMP acknowledges the importance of ongoing education as part of its risk management framework. Consistent with this, the ERMP outlines certain training requirements. CPA anticipates implementing training over the course of FY 2019/2020 as it builds out its staff.

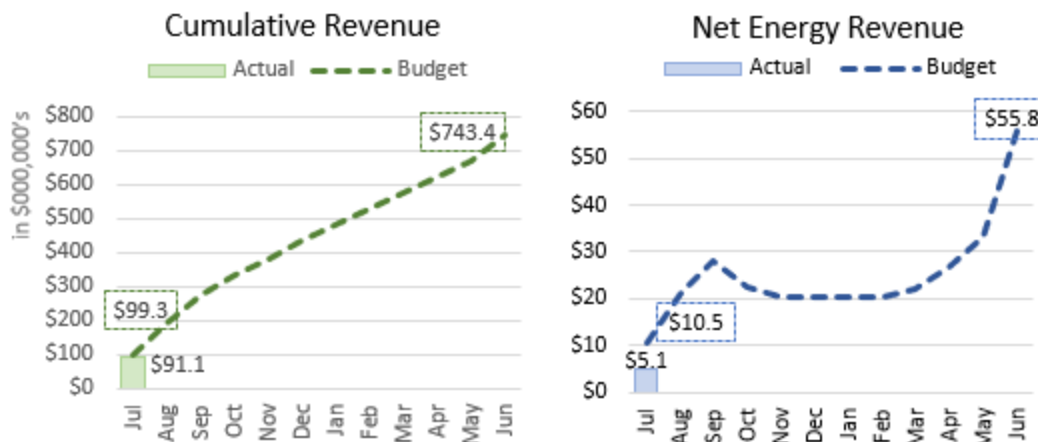
## I. Hedging Strategy

CPA is fully compliant with the hedging strategy provided in Appendix A of the ERMP with the exceptions described in Section G.

Staff developed proposed amendments to the ERMP hedging strategy that was approved by the Board in July 2019. Overall hedge targets were increased in order to leave less of the portfolio exposed to market price fluctuations. Rolling hedge targets seek to avoid large drop-offs in hedge position between the end of one calendar year and the beginning of the following calendar year.

## III. Financial Performance

CPA recorded the following revenue and margin (electricity revenue less cost of energy) results for the 1 month ending July 31, 2019 (FY 2019/20 Year to Date).



CPA revenue and net energy revenue were below budget in July 2019 due to cooler than normal weather and low spot market energy prices. CPA plans to make available its audited financial results, including the management discussion and analysis, for the fiscal year ending June 30, 2019 by the end of October 2019.

#### IV. General Market Outlook

Summer energy prices in 2019 were lower than forecast due mild weather and the lack of major gas or transmission issues. CPA staff regularly monitors market conditions and uses market intelligence to inform procurement decisions.



## Staff Report – Agenda Item 4

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Natasha Keefer, Director of Power Planning and Procurement

**Approved by:** Ted Bardacke, Executive Director

**Subject:** Authorize the Executive Director to execute a Task Order TEA-#4 with The Energy Authority (TEA) for Power Procurement and Advisory Services for the period of October 1, 2019 to June 30, 2020 for a not-to-exceed budget of \$600,000.

**Date:** October 3, 2019

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### **RECOMMENDATION**

Authorize the Executive Director to execute a Task Order TEA-#4 with The Energy Authority (TEA) for Power Procurement and Advisory Services for the period of October 1, 2019 to June 30, 2020 for a not-to-exceed budget of \$600,000.

### **BACKGROUND**

In December 2017, the Board of Directors authorized execution of a three-year Resource Management Agreement (RMA) with TEA for a variety of services related to power procurement and delivery, including scheduling coordination with the California Independent System Operator (CAISO), power trading activities, load and energy price forecasting, risk management, and congestion revenue rights (CRR) management. The RMA was the result of a competitive RFP process that included 11 bidders.

Also in December 2017, CPA executed a three-year TEA Task Order No. 1 (TEA-#1) with TEA for Scheduling and Congestion Revenue Rights Management. In February 2019, the Board approved an amendment to TEA-#1 to account for CPA's four-phase enrollment

schedule. TEA-#1 is not impacted by the recommended action on Task Order TEA-#4, and TEA continues to perform TEA-#1.

In April 2018, the Board authorized the execution of a six-month duration TEA Task Order No. 2 (TEA-#2) with TEA for power procurement and advisory services with a not-to-exceed budget of \$375,000. At the expiration of TEA-#2 in October 2018, the Board authorized execution of TEA Task Order No. 3 (TEA-#3) for power procurement and advisory services to cover the term of October 10, 2018 to June 30, 2019, with a not-to-exceed budget of \$550,000. In June 2019, the Board approved an amendment to TEA-#3 to increase the not-to-exceed budget to \$760,000 and extend the term of the contract from June 30, 2019 to September 30, 2019.

## **DISCUSSION**

### **Task Order TEA-#4**

With the expiration of the TEA-#3 at the end of September 2019, CPA is seeking to put in place Task Order TEA-#4, which will ensure critical procurement functions are properly resourced as CPA builds its in-house staff over the course of the 2019-20 Fiscal Year. TEA-#4 is substantially similar to TEA-#2 and TEA-#3 as they relate to similar services, with more specificity provided around scope of deliverables and timing and work product.

The Task Order TEA-#4 includes the following services:

- Load Forecasting (1.1a and 1.1b) – includes the development and maintenance of CPA's short-term and long-term load forecasts used for CAISO market participation, compliance filings, procurement planning, and revenue forecasting. These services will be provided on a time and materials basis.
- Middle Office Services (1.2) – includes net position tracking, maintaining CPA's deal capture and system of record, calculating CPA's projected power supply costs, and providing counterparty credit monitoring. These services will be provided on a fixed monthly fee.



- Portfolio Management and Procurement (1.3) – transaction procurement and strategy and analysis related to CPA's energy portfolio, including maintaining CPA's risk model. These services will be provided on a time and materials basis.
- Regulatory and Legislative Compliance (1.4) – assist with preparing and submitting monthly and annual CPUC and CEC filings. These services will be provided on a fixed monthly fee.
  - Additional Work (1.5) – TEA may provide other services for procuring and managing CPA's power supply portfolio, as needed. These services will be provided on a time and materials basis.

Monthly costs for services provided on a time and materials basis are anticipated to reduce over time as CPA builds in-house staff and resources.

### **FISCAL IMPACT**

The cost of the Task Order TEA-#4 services is incorporated into the FY 2019-20 budget, which includes procurement services costs for the entire fiscal year.

**Attachment:** 1) Task Order TEA-#4

## **Task Order TEA-#4 for Power Procurement and Advisory Services**

This Task Order 4 for Power Procurement and Advisory Services (“TEA-#4”) is made and entered this 1<sup>st</sup> day of October, 2019 (the “TEA-#4 Effective Date”) and shall conclude on June 30, 2020 (“Term”), by and between The Energy Authority, Inc. (“TEA”) and Clean Power Alliance of Southern California (“CPA”), and the terms and conditions contained herein are hereby incorporated by reference as part of the certain Resource Management Agreement dated the 28th day of December, 2017 (the “RMA”). TEA and CPA are sometimes referred to herein individually as a “Party,” or collectively as the “Parties.” Defined terms used herein but not specifically defined shall have the meanings set forth in the RMA or in the CAISO Tariff. TEA-#4 supersedes and replaces TEA-#3 which expired on September 30, 2019.

### **Section 1 Scope of Services.**

During the term of this TEA-#4, TEA shall provide to CPA certain power procurement and related services (“Services”), as more particularly described herein.

#### **Section 1.1a Load Forecast Development.**

- Provide deterministic load forecasts for wholesale and retail load including hourly and monthly megawatt hours (“MWh”) and monthly coincident Peak MW and hourly MW to support medium and long-term energy and Resource Adequacy procurement and compliance filing requirements.
- Support revenue forecasting by providing hourly retail load forecasts including kilowatt hours and 15-minute peak usage (s) by rate family, rate literal, phase, jurisdiction, and product type.
- Adjustments for opted out customers will be handled by removing individual customers from datasets and recalibrating model.
- Provide load forecasts with documentation cataloguing all assumptions, data inputs, and forecasting methodology.
- Integrate load forecasts into CPA database that also captures historical use data and other billing determinants used to support load and revenue forecasting.
- Expected Load Forecasting Frequency;
  - Billing Determinants
    - March 2020 in conjunction with annual budgeting process
  - Rate Family Load Forecast
    - November 2019 to reflect summer 2019 ASQMD and to inform Q1 and summer 2020 hedging

#### **Section 1.1b Load Forecasting Maintenance.**

TEA will monitor and report accuracy of historical load forecasts on a monthly basis, including:

- Backcasting: compare model load forecast using actual weather with ASQMD
- Weather normalization: compare model load forecast using normal weather with ASQMD
- Support regulatory agency submissions of load forecasts, including engaging in discussions with agencies and SCE regarding forecasting results and methodology.

As requested by CPA, TEA will perform ad-hoc analysis of loads and/or customer behavior including, but not limited to, the following:

- Support periodic updates to long-term electric sales and revenue forecasts including developing scenario analysis. Additional updates to load forecast will be situational and will arise from observed deviations from forecast (DA and medium long term) and may require additional research e.g. incorporation of insolation to account for the impacts of Net Energy metering.
- Support analysis of specific customers and customer segments as needed.
- Support analysis of electric appliance adoption and other factors impacting CPA's load.

## Section 1.2 Middle-Office Services.

TEA will provide the following mid-office services:

- Load and Resource Balance
  - Support maintenance of CPA's Load Resource Balance (LRB) for all product types, including providing CPA with access to TEA's net position portal.
  - The LRB will incorporate the forecast of electricity needs, adjusted for demand side measures to forecast net forecast demand, to compare to energy resources under executed or pending contracts. The difference between net forecast demand and energy resources is the net position. The net position will be calculated for energy, product attributes (PCC1, PCC2, PCC3 and Carbon Free) and Resource Adequacy. The LRB will quantify the net position for energy on an hourly (up to 12 months forward), monthly and annual basis; Resource Adequacy on a monthly and annual basis; and product attributes annually.
    - Hourly net position calculations for energy is under-development. TEA anticipates having the capability to report hourly net energy positions by January 31<sup>st</sup>, 2020.
- Deal Capture and System of Record
  - Enter Transactions executed by CPA for all product types, except as noted below, into TEA's system of record. TEA will provide CPA with access to its Transaction data in a file format that is mutually agreeable to TEA and CPA.
    - Long-term Power Purchase Agreements executed by CPA are not currently entered into TEA's system of record but will be manually entered into the hourly net position tool, end of day reports, and any reporting related to portfolio performance, financial analysis, or planning.
  - Support CPA staff to validate all new contracts in the system of record.
- CPA Proforma Financial Model Support
  - Support CPA's Proforma Financial Projection Model by providing updates of CPA's projected power supply costs, on an accrual and cash basis. Updates will be provided quarterly or upon demand as/when CPA's load forecast is revised or energy market prices move significantly. Standard model updates include:
    - Load, peak, and customer count forecast updates
    - Price forecast
      - Energy at trading hub, DLAP, plus adjustment for load shaping
      - Carbon Free & Renewable Energy
      - Resource Adequacy
    - Position Management
      - Energy
      - Resource Adequacy requirements
        - Annual process
        - Quarterly CPUC Updates

- Update monthly expected resale percentages
  - Update PPA NQC values
- Environmental Product Position Management and accounting
  - Update load with historic actuals
  - Maintain manual log of environmental deals and deliveries for cash flow management
  - Model PPAs and deals with unique cash flow
  - Update CPA's environmental goals and resale/purchase plan
- Maintain connection of CPA Financial Model to TEA's Cash Flow at Risk Model
  - Update revenues
  - Check model validity
- Maintain record of key power cost model inputs.
- Receive CPA sign-off on changes to power cost model assumptions and calculation methodology.
- Credit and Compliance
  - Conduct daily monitoring and reporting on CPA's counterparty credit.
  - Provide credit limit recommendations consistent with CPA's Credit Protocols and provide recommendations for transaction level credit support.
  - Verify that executed Transactions: (i) match an official delegation of CPA's RMT or authorized CPA individual, (ii) have undergone review based on CPA's transaction approval process, and (iii) conform with CPA's Energy Risk Management Policy and Credit Protocols.
- Reporting
  - TEA will provide the following reports through a secure web-portal:
    - Counterparty credit report
    - Energy Risk Management Policy compliance report
    - Daily up-to-date cash and forward position reports for all products, including expected payment date and contract
    - Daily activity (with delegation matrix)
    - Copies of all CPA's contracts and agreements related to Transactions
    - Official record of CPA's Transactions, including checklist and approvals
  - Prepare and present materials for CPA meetings including Risk Management Committee, as requested.

### **Section 1.3 Portfolio Management & Procurement.**

Subject to the terms and conditions of the RMA and in conformance with CPA's Energy Risk Management Policy, TEA shall provide Services on behalf of CPA for Transactions with CPA counterparties. For purposes of this TEA-#4, "Transactions" means the purchase and sale of electricity products, including fixed priced energy, Resource Adequacy capacity, renewable energy, carbon free and/or Asset Controlling Supplier energy.

TEA will coordinate with CPA staff, its consultants, and legal counsel on issues affecting procurement, including:

- Strategy and Analysis
  - Participate in monthly Risk Management Team meetings, periodic calls, email exchanges and other communications with and/or on behalf of CPA during which procurement is discussed.

- Provide guidance on market fundamentals and the timing of hedging decisions and inform CPA on changes occurring in the markets and the underlying drivers of those changes.
- Maintain a Cash Flow at Risk Model for CPA. The Risk Model will generate scenarios by using inputs for several variables that may include market implied heat rates, natural gas prices, power prices, load variables, variable energy resource generation and other relevant inputs. The risk model will be used as a component to the entire risk management function, including calculating potential variability in CPA's power supply costs to help inform the need for short-term hedging transactions using standard and non-standard market products to hedge price and volumetric risk.
- Transaction Procurement (Prompt Month through Month 60)
  - TEA will develop, maintain, and manage relationships with qualified suppliers of requisite energy products as instructed by CPA: participate in periodic calls, email exchanges and other communications with and/or on behalf of CPA.
  - As directed by CPA, TEA will prepare formal Requests for Offer ("RFO") documents to be submitted to power suppliers and manage RFO processes for short-term contracts (up to five years forward) on behalf of CPA for the purpose of procuring power supplies to meet the requirements of CPA's customers, including:
    - Maintaining an up-to-date distribution list of relevant suppliers, including contacts, for various product types.
    - Coordinating information with prospective suppliers and answering questions;
    - Evaluating offers against economic and non-economic criteria set by CPA;
    - Developing short-lists of suppliers and reviewing results with CPA;
    - Evaluating and recommending power suppliers to CPA.
  - RFOs are expected to be released with the following frequency:
    - Fixed-price energy pursuant to CPA's programmatic hedging strategy: Monthly
    - Resource Adequacy (for delivery beyond current year): Quarterly
    - Resource Adequacy (for delivery within current year): Monthly
    - Renewable and/or Carbon-Free or ACS Energy: Quarterly per product (PCC1, PCC2, PCC3, Carbon-free/ACS), whether via formal solicitation or concerted coordination of bilateral discussions
  - From time to time, CPA may direct TEA to conduct Transaction procurement through bilateral discussions rather than a formal RFO process.
  - Work with CPA staff and its legal counsel to provide subject matter expertise on the commercial aspects of power supply transactions. Provide commercial analysis of alternative power products and input on confirmation agreements.
- Air Resource Board Allowances
  - TEA shall assist CPA with meeting its California Air Resources Board compliance obligations including quantifying CPA's obligation and advising on methods and steps in procuring and retiring greenhouse gas emissions allowances.

#### **Section 1.4 Regulatory and Legislative Compliance.**

TEA will perform the following compliance related activities:

- Prepare and submit monthly and annual Resource Adequacy ("RA") showings to the CPUC;
- Prepare and submit historical load, monthly and annual load forecasts to the CPUC and California Energy Commission ("CEC");

**Section 1.5 Additional Work.**

Upon request, TEA may also provide other services related to procuring and managing CPA's power supply portfolio, including but not limited to, the following:

- Assist CPA with the following compliance filings:
  - Integrated Energy Policy Report ("IEPR") to the CEC;
  - RPS Procurement Plan;
  - REC Retirement Report;
  - RPS Compliance Reports;
  - Annual Power Source Disclosure report; and
  - Annual Power Content Label report.

TEA's assistance with completing compliance obligations will be limited to helping prepare the required load and/or generation data in a format consistent with that established by the applicable regulatory agency and/or CPA's legal counsel. Certain compliance filings require CPA's legal counsel designated by CPA to assist with preparing written documentation and providing submittals to the appropriate service list.

- Assisting with evaluating long-term power purchase agreements
- Evaluating the effectiveness of new Transactions not currently approved under CPA's ERMP.
- Assisting with financial model design changes or additional updates requested by CPA not provided for in Section 1.2.
- Other ad hoc analysis related to procurement and/or portfolio management not explicitly stated above.

**Section 2. Term and Termination of this TEA-#4.****Section 2.1 Term of TEA-#4.**

This TEA-#4 shall commence on the Task Order 4 Effective Date and shall continue through June 30, 2020 (the "TEA-#4Term").

**Section 2.2 Termination.**

Notwithstanding Section 4.1 and subject to Section 4.2 of the RMA, either Party may terminate all or a portion of services under this TEA-#4 by providing a minimum of thirty (30) days prior written notice of a designated termination date to the other Party (the "TEA-#4 Termination Notice Period").

**Section 3. Compensation for Services Provided Under This TEA-#4.**

For the Services defined in Sections 1.1 and 1.3, CPA shall pay to TEA an amount determined using the hourly billing rates provided in Section 7 multiplied by the hours of work performed by TEA (the "Variable Services Fee").

For the Services defined in Sections 1.2 and 1.4, CPA shall pay to TEA the fixed monthly service fees shown in the following table:

Job Group	Monthly Fee
-----------	-------------

Task Order 4, Page 5

	<b>\$/Month</b>
Section 1.2 Mid-Office Services	23,000
Section 1.4 Legal and Regulatory Compliance	2,000

The total amount of Service Fees under this TEA-#4, for both Fixed-Fee Services and Variable Services Fees (collectively, the “Service Fees”) shall not exceed six hundred thousand dollars (\$600,000.00) (the “Service Fees Limit”) without the prior written consent of CPA. If the Service Fees Limit is reached, TEA will not be obligated to continue to provide time and materials Services under this TEA-#4, unless and until TEA receives written authorization from CPA as to an additional amount authorized.

#### **Section 4. Controlling Terms and Conditions.**

The provisions of this TEA-#4 are subject to the Terms and Conditions of the RMA between the Parties. If any provisions of this TEA-#4 conflict with any provisions in the RMA, the provisions of the RMA shall take precedence.

#### **Section 5. Expenses and Reimbursement.**

Actual out-of-pocket expenses for travel and participation in on-site meetings are in addition to the Services Fees outlined in Section 4 herein, however, will be included in the calculation of the Service Fee Limit. Travel costs such as airfare, hotel, ground transportation, or meals (hereinafter, “Expenses”) will be billed in the amount incurred by TEA for actual out-of-pocket cost, without any additional mark-up by TEA. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Air travel will be purchased at coach class fares, with advance purchase discounted tickets used when scheduling permits. Expense reports detailing all Expenses, along with receipts, shall be presented to CPA for reimbursement.

#### **Section 6. Settlement, Billing, and Payment Terms.**

##### **Section 6.1 Direct CPA Counterparties.**

During the TEA-#4 Term, TEA shall not be responsible for credit support or payments for Transactions for CPA with counterparties, other than obligations related to CAISO, as more particularly described in Task Order 1 for Scheduling Coordinator and CRR Management Services (“TEA-#1”).

##### **Section 6.2 Hourly Billing and Payments.**

TEA billable hourly fees, if any, will be tracked and itemized for each month in which TEA services are performed under this TEA-#4. Itemized fees will include complete and thorough descriptions of specific work performed. TEA will bill CPA on a monthly basis for the amount of fees owed as Service Fees, or other billable hourly fees (hereinafter, “Compensation”) pursuant to Section 4 of this TEA-#4 plus Expenses, if any. Such billable amounts may be (i) itemized on the same monthly invoice(s) related to TEA-#1, or (ii) billed by TEA on an individual invoice for Services related to TEA-#4.

For Service Fees due under this TEA-#4, CPA shall pay each invoice no later than thirty (30) days (each an “Invoice Due Date”) after receiving the invoice from TEA. CPA will send payment as designated in Section 6.3 herein, or as otherwise designated by TEA.

**Section 6.3 Notices and Invoices.**

TEA shall submit all correspondences and invoices under the RMA and TEA-#4 to:

Clean Power Alliance  
Attn: Executive Director  
555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor  
Los Angeles, CA 90013  
Email: [accountspayable@cleanpoweralliance.org](mailto:accountspayable@cleanpoweralliance.org) (invoices)  
Email: [tbardacke@cleanpoweralliance.org](mailto:tbardacke@cleanpoweralliance.org) (notices)

Unless otherwise provided by TEA, CPA will send payment via electronic funds transfer to TEA's bank account addressed to:

The Energy Authority, Inc.  
301 W. Bay Street, Suite 2600  
Jacksonville, Florida 32202  
Attention: Daina Dean, Accounting

The Parties agree to cooperate to develop and supplement the procedures related to billing and payments for the orderly implementation of Sections 6.1 through 6.3 herein; provided, however, that nothing herein shall require either Party to agree to an amendment to the terms of those sections of this TEA-#4.

**Section 6.4 CPA Failure to Pay.**

CPA's failure to make timely payments for undisputed amounts to TEA under this TEA-#4 before or on each Invoice Due Date, may be considered a breach of the payment terms of this TEA-#4. In the event such a breach is not cured within thirty (30) calendar days (the "Cure Period") following written notice by TEA of the past due invoice amount, then CPA shall be in default (an "Event of Default"). Notwithstanding the forgoing, if the payment of the past due amount would result in the Service Fees Limit being exceeded, then the Cure Period for payment shall be increased to sixty (60) calendar days, to allow payment authorization at the next CPA board meeting. Upon the occurrence of an Event of Default, TEA may, without waiving any other remedies:

- (a) Apply a late fee amount to invoices past due, as allowable, under Section 6.5 herein; and/or
- (b) Give notice of Termination of this TEA-#4 and all services provided for herein pursuant to the process set forth in Section 2.2 herein.

**Section 6.5 Late Payments.**

Any payment for Services under TEA-#4 that is not received by TEA on or before the Invoice Due Date required may incur a late fee and be subject to Cure Period. The late fee shall be calculated by multiplying the total undisputed outstanding balance by the lesser of (i) the Interest Rate (as described in RMA Section 25.2), or (ii) the maximum rate allowable by state law for the number of days which the balance remains outstanding (the "Late Fee").

**Section 7. Billing Rates**



The TEA Billing Rates shown in the table below are applicable to any work performed by TEA under TEA-#4 for which TEA is compensated on the basis of actual hours worked by TEA staff. Billing rates are fixed for the term of this Task Order.

<b>Job Group</b>	<b>Billing Rate \$/hour</b>
Principal Consultant	\$315
Senior Consultant / Project Manager	\$265
Consultant	\$195
Analyst	\$155
Clerical	\$95

**Section 8. Functions Performed by CPA.**

Unless otherwise mutually agreed to by the Parties, activities not expressly provided for herein are considered not within the scope of services for this TEA-#4 and shall not be performed by TEA, unless otherwise addressed in a separate Task Order or an amendment to this TEA-#4.

**Section 9. Amendment.**

This TEA-#4 may only be amended by an instrument in writing signed by each Party's authorized representative.

**Section 10. Compliance with CPA Policies**

TEA shall comply with any policies, requirements, forms, or other documents governing contractor conduct that CPA may issue from time to time.

**Section 11. No Recourse Against Constituent Members of CPA**

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

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this TEA-#4 to be executed by their respective duly authorized representatives as of the date written in the first paragraph of this TEA-#4.

**CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA**

**THE ENERGY AUTHORITY, INC.**

By: \_\_\_\_\_

Name: Theodore Bardacke

Its: Executive Director

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Joanie C. Teofilo

Its: President and CEO

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: Nancy Whang

Title: General Counsel

Date: \_\_\_\_\_

## Staff Report – Agenda Item 5

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Christian Cruz, Community Outreach Manager

**Approved By:** Ted Bardacke, Executive Director

**Subject:** Appoint one member to the Community Advisory Committee for 2019-20 representing the South Bay Region.

**Date:** October 3, 2019

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### **RECOMMENDATION**

Appoint Emmitt Hayes to the Community Advisory Committee (CAC) for 2019-20 representing the South Bay Region.

### **BACKGROUND**

On June 7, 2018, the Board of Directors approved a structure for the CAC to provide input on various policy and planning issues as well as be a voice for CPA in the community. Staff worked with member jurisdictions and stakeholders to solicit interest in the CAC through an outreach campaign. On November 15, 2018 the Board appointed 13 candidates to represent six of the seven CAC sub-regions. Over the past year, the CAC experienced turnover and staff worked to conduct additional outreach, partnering with CPA member agencies and current CAC members to solicit interest from new candidates to fill the unscheduled vacancies. At the September 5, 2019 Board meeting, David Lesser was appointed to fill one vacancy for the South Bay region.

### **DISCUSSION**

#### **RECOMMENDED CAC APPOINTMENT**

The following South Bay Region applicant is being recommended by staff for Board consideration. This recommendation is based on a review of applications and in consultation with various member agencies representing the South Bay. Emmitt Hayes would fulfill a diverse area of expertise currently lacking on the CAC. As a business owner

of a real estate firm, Mr. Hayes brings experience from the private sector and unique community perspective, as he routinely works with low and moderate-income families to achieve their goals of homeownership. An application summary for the recommended candidate is provided as an attachment to this staff report. If the Board of Directors takes action to appoint the recommended applicant, then the CAC will be fully seated with no open positions remaining.

<b>APPLICANTS FOR CONSIDERATION</b>	
<b>South Bay</b> 1 position available. 3 applicants.  Recommended appointment: <ul style="list-style-type: none"> <li>Emmitt Hayes</li> </ul>	
<b>CURRENT APPOINTED CAC MEMBERS</b>	
<b>East Ventura/West LA County</b> <i>(Agoura Hills, Camarillo, Calabasas, Moorpark, Simi Valley, Thousand Oaks)</i>  Appointed members: <ul style="list-style-type: none"> <li>Angus Simmons</li> <li>Laura Brown</li> <li>Lilian Mendoza</li> </ul>	<b>San Gabriel Valley</b> <i>(Alhambra, Arcadia, Claremont, Sierra Madre, South Pasadena, Temple City)</i>  Appointed members: <ul style="list-style-type: none"> <li>Richard Tom</li> <li>Robert Parkhurst</li> </ul>
<b>West/Unincorporated Ventura County</b> <i>(Ojai, Oxnard, Ventura, Unincorporated Ventura County)</i>  Appointed members: <ul style="list-style-type: none"> <li>Lucas Zucker</li> <li>Steven Nash</li> </ul>	<b>South Bay</b> <i>(Carson, Hawthorne, Manhattan Beach, Redondo Beach, Rolling Hills Estates)</i>  Appointed members: <ul style="list-style-type: none"> <li>David Lesser</li> <li>VACANT</li> </ul>
<b>Gateway Cities</b> <i>(Downey, Hawaiian Gardens, Paramount, Whittier)</i>  Appointed members: <ul style="list-style-type: none"> <li>Jaime Abrego</li> <li>Jordan Salcido</li> </ul>	<b>Westside</b> <i>(Beverly Hills, Culver City, Malibu, Santa Monica, West Hollywood)</i>  Appointed members: <ul style="list-style-type: none"> <li>Cris Gutierrez</li> <li>David Haake</li> </ul>
<b>Unincorporated LA County</b>  Appointed members: <ul style="list-style-type: none"> <li>Neil Fromer</li> <li>Kristie Hernandez</li> </ul>	

**Attachment:** 1) CAC Applicant Summary



## Community Advisory Committee Applicant Summary

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**Candidate:** Emmitt Hayes      **Subregion:** South Bay      **Eligible Candidate:** Yes

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### **Section 1: Personal Information**

- A.** Home Address: Redondo Beach, CA  
**B.** Occupation: Real Estate Broker

### **Section 2: Qualifications**

- *Experience serving on advisory committees / public commission / similar bodies:*
  - n/a.
- *Experience with outreach or community leadership:*
  - Partnered with Pure Hearts R Us to assist low to moderate income residents to achieve home ownership. I would guide and provide expertise.
- *Experience or expertise in energy field: N/A*
  - As a business owner and real estate broker, I encounter various issues on energy, as it would impact new owners.
- *Other skills / knowledge / experience to bring to Committee:*
  - Along with advocating for affordable home ownership, I understand the impact a utility bill has on homeowner versus renters and have knowledge on the kind of pitfalls and surprises that come with that.

### **Section 3: Additional Information**

- A.** *Why you are interested / what you hope to achieve:*
- I am interested in join the committee because, knowledge is power. I want to get educated on how to help assist others to access clean power. The thing I want to achieve is connecting with likeminded individuals who also want to educate the community about clean power.
- B.** *List other languages / ability to support non-English speaking communities: n/a*
- C.** *Anything else you would like CPA to know:*
- I am active in my community and will be a tremendous asset to the community. I am able to connect with all walks of life and create bonds.

### **Section 4: Commitment**

- A.** *Ability to make commitment:*
- I am able to commit to the 2 year period.
- B.** *Signed to certify electric holder in CPA service territory and meet eligibility requirements? Yes.*





## Staff Report – Agenda Item 6

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Nancy Whang, General Counsel

**Subject:** CPA's Notice of Intent to Amend the Bylaws Regarding Participation of Non-elected Alternate Directors in Closed Session

**Date:** October 3, 2019

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### **RECOMMENDATIONS**

- a) Approve the Bylaw amendment language regarding participation of non-elected Alternate Directors during closed session;
- b) Provide 30-day notice of CPA's intent to amend the Bylaws; and
- c) Direct the General Counsel to return with an implementing resolution for adoption of the amended Bylaws effective January 1, 2020 at the next duly-noticed Board meeting following the 30-day notice period.

### **BACKGROUND**

On March 7, 2019, the Board adopted the CPA Bylaws, which contained a provision (Art. IV, Section 3.d.) that precludes an Alternate Director from participating in CPA closed session discussions unless the Alternate Director is a member of the member agency's legislative body. This provision of the Bylaws conformed with Government Code Section 54956.96. At the same meeting, the Board voted to sponsor and support Senate Bill 355 which would provide an exception for CPA non-elected Alternate Directors to participate in Closed Session.

On September 5, 2019, Governor Newsom signed SB 355 into law, which authorizes CPA to adopt a bylaw to allow a non-elected Alternate Director to attend a properly noticed

closed session when attending in place of a Regular Director. The law takes effect on January 1, 2020.

### **DISCUSSION**

Pursuant to Section 4.11.1, subdivision (d), of the Joint Powers Agreement (“JPA”), CPA must provide 30-day advance notice of its intent to amend the Bylaws. Advance notice for public comment is provided via the Agenda posting and this staff report. The proposed amendments to the Bylaws are provided as Attachment 1 in redline form. Staff requests that the Board approve the language for the Bylaw amendment and direct the General Counsel to return with an implementing resolution for adoption of the amended and restated Bylaws at the next duly-noticed Board meeting following the 30-day notice period. The adoption would be effective January 1, 2020. Upon adoption, staff will provide written notice of the change and provide a copy of the amended Bylaws to member agencies in compliance with Section 4.11.1. of the JPA.

**Attachment:**            1) Proposed Amendments to CPA Bylaws



**AMENDMENT TO BYLAWS  
OF  
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

The Bylaws of Clean Power Alliance of Southern California (“the Bylaws”) will be amended as follows:

Article IV, Section b of the Bylaws is amended as follows:

b. Discussions with Local Agency Governing Bodies and Local Agency Legal Counsel. A Director may disclose information obtained in a closed session that has direct financial or liability implications for the Director’s Local Agency, to the following individuals: i) Legal counsel of the Director’s governing body for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Local Agency; and ii) ~~Other~~ Members of the governing body of the Local Agency present in a closed session of that Local Agency.

Prior to disclosing any information obtained in a closed session to legal counsel of the Director’s Local Agency or other members of the legislative body of the Director’s Local Agency, the Director shall notify the General Counsel of the intention to discuss the matter with their Local Agency’s legal counsel or other members of the legislative body. This notification shall provide the General Counsel with an opportunity to discuss with the Local Agency’s legal counsel whether the matter has direct financial or liability implications for the Director’s Local Agency.

Article IV, Section d of the Bylaws is amended as follows:

d. Alternate Directors Participation. Any designated Alternate Director of the legislative body of a Local Agency ~~who is also a member of the legislative body of a Local Agency~~ ~~and~~ who is attending a properly noticed meeting of the Alliance in lieu of a Local Agency Regular Director may participate in a closed session meeting of the Alliance.

Except as herein amended, the provisions of the Bylaws shall remain in full force and effect. This amendment will be effective as of January 1, 2020.



## Staff Report – Agenda Item 7

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** David McNeil, Chief Financial Officer

**Subject:** Amend Net Energy Metering (NEM) Policy to Address Unclaimed Returned Checks

**Date:** October 3, 2019

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### **RECOMMENDATION**

Approve proposed amendment to Policy No. 7 Net Energy Metering regarding procedures for processing unclaimed returned checks.

### **BACKGROUND**

In February 2019, the Board of Directors approved Policy No. 7 - Net Energy Metering (NEM Policy). In March 2019, the Board approved revisions to the NEM Policy that incorporated clarifications and updates for customers with onsite solar or other renewable generation systems.

The NEM Policy governs operation of CPA's NEM Program and includes the calculation and application of credits and payments to customers for excess generation from customers behind the meter, and primarily roof top solar facilities.

### **DISCUSSION**

#### **Proposed Amendment**

CPA issues NEM cash out checks to customers that no longer receive service from CPA ("inactive customers") to whom funds are owed in accordance with the NEM Policy. Since January 1, 2019, CPA has issued 242 NEM cash out checks to inactive customers of

which approximately 75, or 30% of those checks have expired or been returned to CPA. As a matter of practice, CPA's checks expire within 90 days. The average amount of NEM cash out checks is \$20.50 and the average returned or expired NEM cash out check is \$18.49.

Staff's proposed updates to the NEM Policy clarify or formalize that: i) checks will be mailed to the address on file; ii) checks expire 90 calendar days after issuance; and iii) former CPA customers eligible to receive NEM cash out checks may request the reissuance of an expired or returned check at any time.

The Finance Committee members reviewed the proposed revisions to the NEM Policy at the August meeting and supported the proposed changes. Staff proposes that the Finance Committee review NEM Policy provisions dealing with the expiration or return of checks made out to active customers eligible to receive an annual cash out following the first annual cash out process, which will occur in May 2020.

**Attachment:** 1) Revised CPA NEM Policy



**Net Energy Metering Service**  
**Clean Power Alliance NEM Policy**  
**PROPOSED REVISIONS**

**APPLICABILITY:** Clean Power Alliance of Southern California’s (CPA) Net Energy Metering Program (CPA NEM Program) is available to those CPA customers who are eligible under Southern California Edison’s (SCE) net energy metering program pursuant to the following SCE rate schedules: (i) Schedule NEM (Net Energy Metering); (ii) Schedule NEM-ST (Net Energy Metering Successor Tariff), (iii) Schedule NEM-V (Virtual Net Energy Metering for Multi-Tenant and Multi-Meter Properties); (iv) Schedule NEM-V-ST (Virtual Net Energy Metering for Multi-Tenant and Multi-Meter Properties Successor Tariff); (v) Schedule MASH-VNM (Multifamily Affordable Solar Housing Virtual Net Metering); (vi) Schedule MASH-VNM-ST (Multifamily Affordable Solar Housing Virtual Net Metering Successor Tariff); (vii) Schedule BG-NEM (Biogas Net Energy Metering); and (viii) Schedule FC-NEM (Fuel Cell Net Energy Metering) (jointly referred to as “SCE NEM Rate Schedules”). These SCE NEM Rate Schedules are available at: <https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates> and may be amended or replaced by SCE from time to time. CPA’s NEM Policy may be amended or clarified from time to time.

CPA customers who want to participate in NEM after enrolling with CPA must provide SCE with a completed SCE NEM Application and comply with all other SCE requirements before being eligible for the CPA NEM Program.

Eligible CPA customers who meet the requirements for the SCE NEM Program will be automatically enrolled in the CPA NEM Program either at the time of initially enrolling with CPA or at the time SCE accepts them into SCE’s NEM Program.

**RATES:** All rates for the CPA NEM Program will be in accordance with the customer’s applicable CPA rate schedule (CPA OAS). Nothing in this policy will supersede any SCE authorized charges.

**CHARGES & BILLING:** CPA’s charges for energy (kWh) will be calculated at the CPA OAS and billed on the net metered usage, as described below.

a) For a customer with Non-Time of Use (TOU) Rates<sup>1</sup>:

If the customer is a “Net Consumer,” having overall positive usage during a specific monthly billing cycle, the customer will be billed in accordance with the customer’s CPA OAS.

If the customer is a “Net Generator,” having overall negative usage during a specific monthly billing cycle, any net energy production shall be valued at the applicable rate as set forth in the customer’s CPA OAS. The calculated value of any net energy production shall be credited to the customer according to the CPA OAS and applied as described in Sections (c) and (d).

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<sup>1</sup> Only applicable to grandfathered SCE NEM 1.0 customers. Please visit <https://www.sce.com/residential/generating-your-own-power/net-energy-metering> for more information.

b) For a customer with TOU Rates:

If the customer is a Net Consumer during any discrete TOU period reflected within a specific monthly billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates or charges as specified in the customer's OAS.

If the customer is a Net Generator during any discrete TOU period reflected within a specific monthly billing cycle, any net energy production shall be valued at the applicable TOU period-specific rates or charges as specified in the customer's CPA OAS. The calculated value of such net energy production shall be credited to the customer according to the CPA OAS and applied as described in Sections (c) and (d).

c) Monthly Settlement of CPA Charges/Credits:

Each customer will receive a statement as part of its monthly SCE bill indicating any accrued charges for electric energy usage during the current monthly billing cycle. When a customer's net energy production results in an accrued credit balance in excess of currently applicable charges, the value of any net energy production during the monthly billing cycle (in excess of currently applicable charges) shall be valued at the CPA OAS and noted on the customer's bill, including the quantity of any surplus NEM production (measured in kWh), and carried over as a bill credit for use in a subsequent billing cycle(s).

A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable charges, reducing otherwise applicable charges by an equivalent amount to such credits. Any remaining credits reflected on the customer's billing statement shall be carried forward to subsequent billing cycle(s) until either the excess the credit is used to satisfy current charges, the customer no longer receives service from CPA or an annual account true-up is performed.

d) CPA Annual True-Up & Cash-Out Processes:

## i) CPA Annual True-Up

- a. NEM Generation Credit Refund: During the April monthly billing cycle of each year, CPA will perform a true-up of the most recent twelve (12) month billing cycle, or the period of time from the customer's commencement of participation in the CPA NEM Program up to the following April (the "Relevant Period"). At the time of the Annual True-Up, if the customer has accumulated any NEM generation credits in excess of any currently outstanding charges, those NEM generation credits will be refunded to the customer up to the total CPA charges paid by the customer on the same NEM account during the Relevant Period, consistent with CPA's Annual Cash-Out practice in (ii).<sup>2</sup>

However, for customers who enrolled in CPA prior to May 1, 2019, CPA will perform the first Annual True-Up in April 2020; and for customers who enrolled on or after

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<sup>2</sup> If the Customer Account has any outstanding balance at the time of Annual True-Up, the customer will have a 30 day grace period to pay in full before their Annual True-Up is performed in order to be eligible for NEM Generation Credit refund.

May 1, 2019, CPA will perform the first Annual True-Up in April 2021. Commencing in April 2021, CPA will perform the Annual True Up for the 12-month period between April to March for all current NEM customers.

- b. Net Surplus Compensation: Net Surplus Energy is defined as any generation that exceeds total customer energy usage during the Relevant Period, as measured in kWh. CPA will also determine whether each customer has produced Net Surplus Energy over the course of the Relevant Period. If a customer has produced Net Surplus Energy, then CPA shall credit such customer an amount not to exceed \$10,000 that is equal to the current Net Surplus Compensation rate per kWh, as defined in CPA Net Surplus Compensation Rate Schedule, multiplied by the quantity of Net Surplus Energy produced by the customer during the Relevant Period, consistent with CPA's Annual Cash-Out practice in (ii) below. The CPA Net Surplus Compensation Rate Schedule will be posted to CPA's website and updated monthly. CPA Net Surplus Compensation Schedule can be viewed at <https://cleanpoweralliance.org/wp-content/uploads/2019/01/CPA-NSCR.pdf>.
- ii) CPA Annual Cash-Out: During the April monthly billing cycle of each year, any current customer who has a combined NEM generation credit and Net Surplus Compensation value of \$100 or more, as determined during the Annual True-Up process, that exceeds any outstanding charges, will be sent a payment by check [via U.S. Mail to the customer's mailing address on file at the time of mailing](#) for the credit balance on their account, as determined through CPA's Annual True-Up process (i). Customers receiving direct payment will have an equivalent amount removed from their NEM account balance at the time of check issuance. In the event that customers do not have a combined NEM generation credit and Net Surplus Compensation value exceeding \$100, such credit balance will be carried forward to offset future CPA charges. All NEM accounts will be reset to zero kilowatt hours annually as of the customer's May monthly billing cycle and the only NEM credits that will be carried forward on the customer's account will be the combined NEM generation credit and Net Surplus Compensation credit balances less than \$100.
- iii) CPA Cash-Out for Terminations: Customers, who close their electric account through SCE, [opt-out of CPA and return to bundled service](#), or move outside of the CPA service area prior to the April monthly billing cycle of each year, shall be true up according to CPA's Annual True-Up Process. If applicable, the customer shall receive a refund payment by check [via U.S. Mail to the customer's mailing address on file at the time of mailing](#) for any NEM generation credit on their account that exceeds outstanding charges at the time of true-up, up to the amount paid by the customer during the Relevant Period. If determined to have produced Net Surplus Energy, the customer shall also receive a check [via U.S. Mail to the customer's mailing address on file at the time of mailing](#) for Net Surplus Compensation, up to a maximum of \$10,000. Payments will be released 30 days after final billing to allow for any revised usage and/or adjustments from SCE. [Checks will expire 90 calendar days after issuance. If checks expire or are returned to CPA, customers may request the reissuance of a check and CPA will make a reasonable effort to reissue the check within 30 days of a customer's request.](#)

e) SCE NEM Program:

Customers are subject to applicable terms and conditions and billing procedures of SCE for SCE charges as described in SCE NEM Rate Schedules (with the exception of generation-related charges, which are described in CPA's rate schedules). Customers should be aware that while CPA settles balances for generation on a monthly basis, SCE will continue to calculate charges for delivery, transmission and other services annually for those customers with an annual billing option, and CPA NEM credits cannot be applied to any SCE charges.

Customers are encouraged to review SCE NEM Rate Schedules at <https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates>.

f) Return to SCE Bundled Service:

CPA customers participating in the CPA NEM Program may opt out and return to SCE's bundled service, subject to any applicable restrictions imposed by SCE. If a CPA customer opts out more than 60 days after their initial enrollment date, CPA will perform a true-up of their account, as specified in section (d)(iii), at the time of return to SCE bundled service. For details concerning opting out of CPA service, please contact CPA Customer Service at 888-585-3788 or [customerservice@cleanpoweralliance.org](mailto:customerservice@cleanpoweralliance.org)



## Staff Report – Agenda Item 8

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Christian Cruz, Community Outreach Manager  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Community Advisory Committee (CAC) September 2019 Report  
**Date:** October 3, 2019

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### **RECOMMENDATION**

Receive and file the report from the Community Advisory Committee September 12, 2019 Community Advisory Committee meeting.

### **DISCUSSION**

On September 12, 2019 the CPA Community Advisory Committee (CAC) held its monthly meeting. During this meeting the CAC received an update on the SCE billing delays and how CPA is making significant progress with SCE in re-billing these customers for missed charges. Additionally, the CAC was provided a brief review of the recent Board action to include PCC-3, as part of the 2019 CPA energy portfolio.

The CAC also received presentation on CPA's 2019-20 Marketing and Outreach Plan, which highlighted CPA's overarching external communications goals for the coming year. As part of this presentation, staff looked for input from the diverse expertise of our CAC members to adapt to our external messaging and engagement activities to better resonate with our target audiences. Specifically, staff requested feedback from the CAC on how to engage customers in new actions and expand the CPA external presence throughout the CPA service territory.

The CAC welcomed new member David Lesser representing the South Bay region to the Committee.

**Attachment:** 1) CAC Meeting Attendance

**Community Advisory Committee Attendance****2019**

	Feb	Mar	Apr	May	Jun	July	Aug	Sept
<b>East Ventura/West LA County</b>								
Angus Simmons	✓	✓	✓	✓	✓	✓		A
Laura Brown	✓	A	✓	A	✓	A		✓
Lilian Mendoza	✓	A	A	A	A	A		✓
<b>San Gabriel Valley</b>								
Richard Tom	✓	A	✓	✓	✓	A		✓
Robert Parkhurst	✓	✓	✓	✓	✓	✓		✓
<b>West/Unincorporated Ventura County</b>								
Lucas Zucker	✓	✓	A	✓	✓	✓		✓
Steven Nash	✓	✓	✓	✓	✓	✓		✓
<b>South Bay</b>								
David Lesser								✓
<b>Vacant</b>	A	A	A	A				
<b>Gateway Cities</b>								
Jaime Abrego	✓	A	✓	A	A	✓		✓
Jordan Salcedo	✓	A	✓	✓	A	A		A
<b>Westside</b>								
Cris Gutierrez	✓	✓	A	✓	✓	✓		✓
David Haake	A	✓	✓	✓	✓	A		✓
<b>Unincorporated LA County</b>								
Neil Fromer		A	✓	✓	A	✓		A
Kristie Hernandez					✓	A		✓

**Major Action Items and Presentations*****February***

CPA Rate Development  
 Communications and Outreach  
 Long Term Renewables Request for Offers (RFO)  
 Voyager Scholarship Program  
 Committee Procedures - Chair and Vice Chair Elections

***March***

Voyager Scholarship Program  
 Upcoming Activities and Operations

***April***

Voyager Scholarship Program Final Recommendation  
 Chair and Vice Chair Elections

***May***

Local Programs Goals and Priorities CAC input Session

***June***

Local Programs Goals and Priorities Workshop

***July***

Update on 2019/20 Legislation  
 Input on DER pilot Program

***August***

DARK

***September***

Update on Operational Activities  
 2019/20 Marketing and Outreach Plan





## Staff Report – Agenda Item 9

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** David McNeil, Chief Financial Officer  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Letter Agreement Amending River City Bank Credit Covenants  
**Date:** October 3, 2019

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### **RECOMMENDATION**

Receive and file letter agreement with River City Bank updating loan covenants.

### **SUMMARY**

In March 2018, CPA selected River City Bank from among respondents to a Request for Proposals for banking services. In May 2018, CPA's Board approved a Credit Agreement of up to \$31 million with River City Bank, of which \$20 million was made available in August 2018. The Credit Agreement is a revolving credit facility that CPA uses to provide letters of credit and to borrow funds to provide working capital.

In April 2019, CPA's Board approved the First Amendment to the Credit Agreement with River City Bank. The First Amendment extended the term of the agreement to March 31, 2021, increased the facility amount to \$37 million, reduced the interest rate on borrowing, and affected several other commercial and administrative changes.

In September 2019, CPA and River City Bank agreed to revise the credit covenants outlined in the credit agreement. The revision reflects CPA's updated financial projections following substantial completion of its enrollment phase. Staff believes the proposed

changes are positive and reflect River City Bank's continuing confidence in the financial outlook and strength of the agency.

**Attachment:** 1) Letter Agreement with River City Bank

**River City Bank**

September 30, 2019

Clean Power Alliance of Southern California  
Ted Bardacke, Executive Director  
David McNeil, Chief Financial Officer  
555 West 5th Street, 35th Floor  
Los Angeles, CA 90013  
E-mail: [tbardacke@cleanpoweralliance.org](mailto:tbardacke@cleanpoweralliance.org); [dmcneil@cleanpoweralliance.org](mailto:dmcneil@cleanpoweralliance.org)

Re: Loan No. 5084548842 (the "Revolving Credit") to Clean Power Alliance of Southern California ("Borrower") from River City Bank ("Lender")

Mr. Bardacke and Mr. McNeil:

Reference is made to that certain Credit Agreement (as amended, the "Credit Agreement") dated as of August 7, 2018, between Borrower and Lender. Capitalized terms used but not defined herein have the meanings set forth in the Credit Agreement.

Under that certain First Amendment to Credit Agreement dated as of April 4, 2019, Borrower and Lender agreed to certain modifications of the Credit Agreement. By signing this letter, Borrower and Lender intend and agree to further amend the covenants set forth in Sections 10.6 and 10.7 of the Credit Agreement by restating Sections 10.6 and 10.7 as follows:

Section 10.6. Unrestricted Tangible Net Assets. Borrower shall maintain minimum Unrestricted Tangible Net Assets not at any time less than (i) Eight Million and 00/100 Dollars (\$8,000,000.00), measured annually as of June 30, 2019, and (ii) Thirty-Three Million Five Hundred Thousand and 00/100 Dollars (\$33,500,000.00), measured annually as of June 30, 2020.

"*Unrestricted Tangible Net Assets*" is defined as total assets less temporarily and permanently restricted assets (not including any amounts held in Debt Service Reserve Account), less any intangible assets, less total liabilities.



*Section 10.7. Minimum EBIDA.* Borrower will maintain a minimum EBIDA as follows:

Reporting Period	Cumulative Projections Through	Minimum EBIDA Requirement
7/1/2018 - 6/30/2019	6/30/2019 (12 mos.)	\$15,790,000
7/1/2019 - 9/30/2019	9/30/2019 (3 mos.)	\$6,430,000
7/1/2019 - 12/31/2019	12/31/2019 (6 mos.)	\$1,360,000
7/1/2019 - 3/31/2020	3/31/2020 (9 mos.)	\$1,710,000
7/1/2019 - 6/30/2020	6/30/2020 (12 mos.)	\$24,280,000
7/1/2020 - 9/30/2020	9/30/2020 (3 mos.)	\$13,290,000
7/1/2020 - 12/31/2020	12/31/2020 (6 mos.)	\$9,300,000
7/1/2020 - 3/31/2021	3/31/2021 (9 mos.)	\$8,070,000

Except as expressly set forth herein, the Credit Agreement is not modified in any respect, and all of its terms remain in full force and effect.

**Acknowledged and Agreed:**

**River City Bank**

Signed: \_\_\_\_\_

Name: R.J. Wood

Title: VP/Documentation Mgr.

**Acknowledged and Agreed:**

**Clean Power Alliance of Southern California**

Signed: \_\_\_\_\_

Name: Ted Bardacke

Title: Executive Director





## Staff Report – Agenda Item 10

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Gina Goodhill, Policy Director  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Local Programs Goals and Priorities Presentation  
**Date:** October 3, 2019

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At the October 3, 2019 Board meeting, representatives from CPA's consultant team Arup will provide a presentation on the progress of Local Programs Goals and Priorities project.

**Attachment:** 1) Local Programs Presentation

# CLEAN POWER ALLIANCE

## Local Program Goals and Priorities Status Update

CPA Board of Directors Meeting - October 3, 2019

# Agenda

## **Recap**

- Purpose of project
- Project schedule

## **Stakeholder Process**

- Who we engaged
- What we heard

## **Program Categories**

## **Comparison Tool**

## **Next Steps**

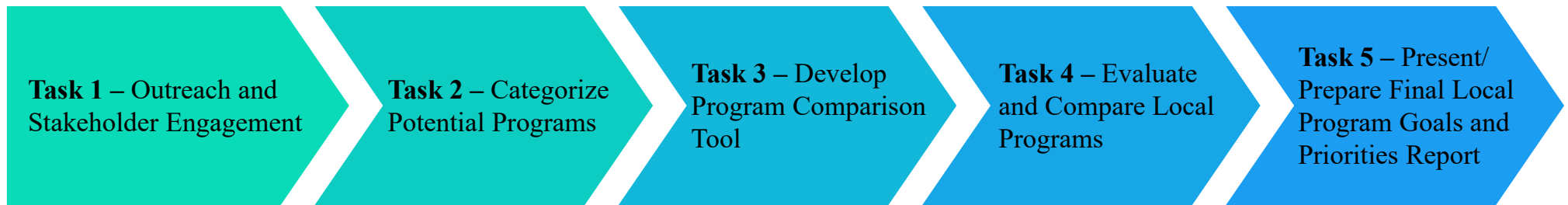
## **Q&A**

# Project Purpose

Provide Clean Power Alliance with:

1. Stakeholder goals and priorities, and a local program comparison tool, to aid **future** development and refinement of local programs
2. An **initial** prioritized set of recommendations on local programs based on this framework

# Project Process



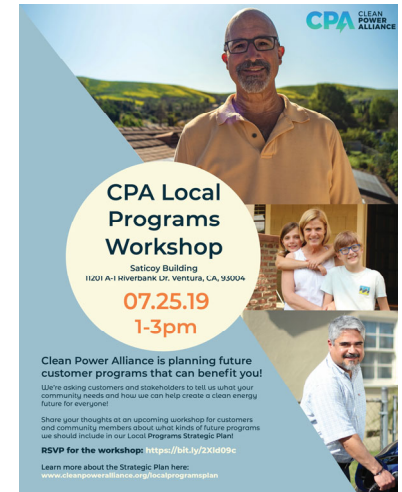
# Stakeholder Process

## Who We Engaged

### Goal Setting Workshops: 100 total participants

- CPA Board Retreat
- CPA CAC Workshop
- LA County Public Workshop
- Ventura County Public Workshop
- Subject Matter Focus Groups
  - Environmental
  - Environmental Justice / Community
  - Labor

### On-Line Survey (English, Spanish, Chinese): 317 total participants

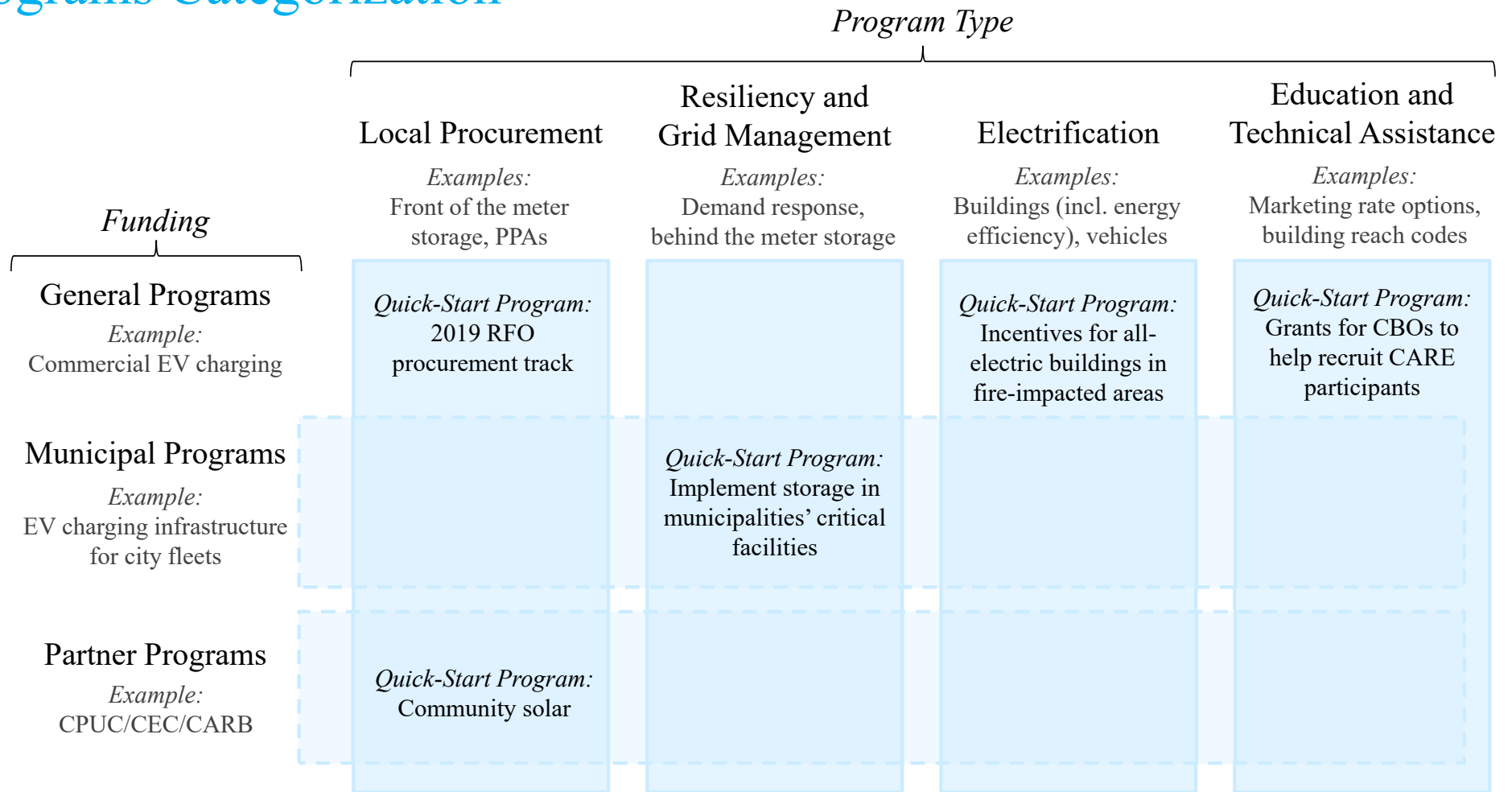


# Stakeholder Process

## What We Heard

Goals and Priorities		Weighting (%)
Outcomes		
1.	Make 100% Green Rate more affordable	14.2
2.	Job creation	12.4
3.	Decarbonization	10.8
4.	Local resiliency – community response to stresses	8.3
5.	Increase accessibility and benefits for specific groups	7.5
6.	Grid resiliency – mitigating grid shutdowns	6.5
7.	Public health – including air quality, heat stress and sensitive receptors	5.2
Program Type		
1.	Distributed energy resources	8.2
2.	Energy efficiency	7.5
3.	Education	7.4
4.	Electrification	6.2
5.	Local program funding	4.8
6.	Partnerships	1.1

# Programs Categorization

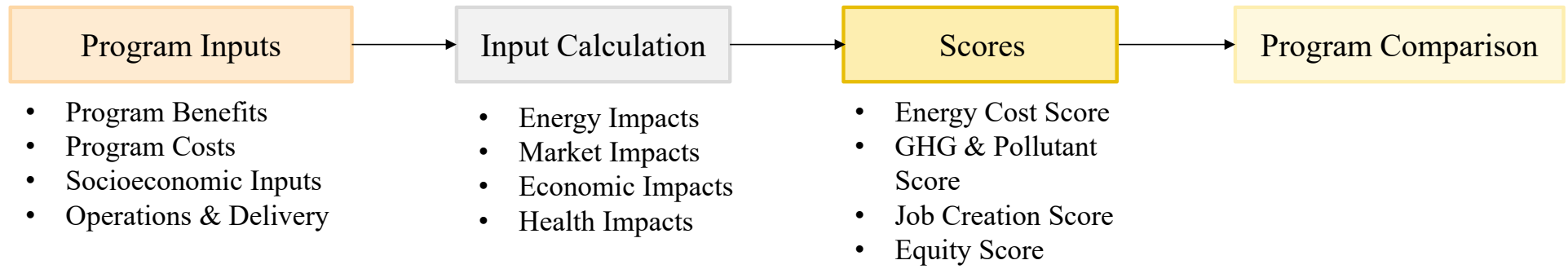


Slide 7



# Comparison Tool

## Tool Workflow



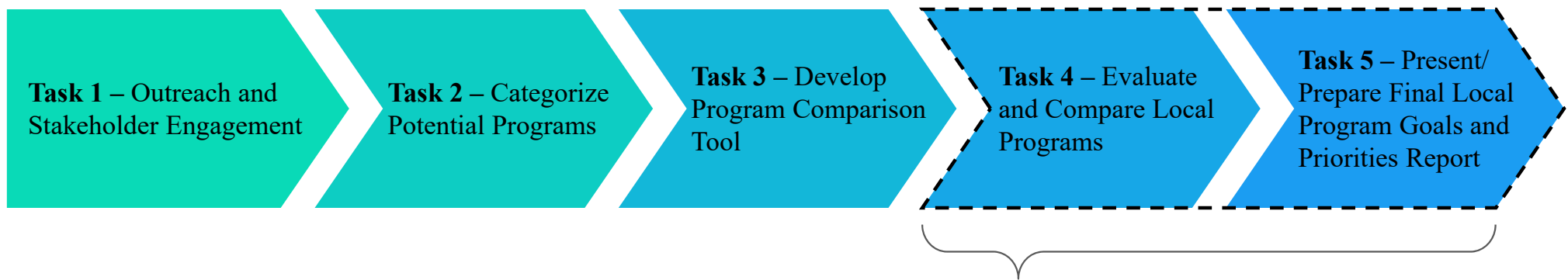
# Comparison Tool

## Tool Capabilities

The tool helps Clean Power Alliance by providing the following capabilities:

- **Compare** programs for prioritization
- **Justify investment** in a program by understanding its **co-benefits**
- **Adjust** a program to **maximize co-benefits** and **cost effectiveness**
- **Updatable** to changing circumstances and priorities

## Next Steps



**Nov 14<sup>th</sup>:** Presentation to the CAC  
(75% completion stage)

**Dec 5<sup>th</sup> or Jan 9<sup>th</sup>:** Present final report to the Board



## Staff Report – Agenda Item 11

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**To:** Clean Power Alliance (CPA) Executive Committee

**From:** Ted Bardacke, Executive Director

**Subject:** Approve and authorize the Executive Director to execute Amendment No. 1 to the agreement between Calpine and CPA and approve and authorize the Executive Director to execute an agreement with Calpine and Olivine, Inc. for Distributed Energy Resources (DER) Pilot Program services

**Date:** October 3, 2019

---

### **RECOMMENDATION**

Approve and authorize the Executive Director to execute Amendment No. 1 to the agreement between Calpine and CPA and approve and authorize the Executive Director to execute an agreement with Calpine and Olivine, Inc. for Distributed Energy Resources (DER) Pilot Program services.

### **BACKGROUND**

In July 2018, the Board approved a 4-year contract with Calpine Energy Solutions for data management and call center services. Included in the contract scope was the planning and implementation of a Distributed Energy Resources (DER) pilot (“DER pilot program”), in partnership with subcontractor Olivine, Inc., to commence no later than January 2020. Planning tasks for the DER Pilot Program were specified in the July 2018 contract with Calpine as was the intention to enter into a more detailed tripartite DER Services Agreement with CPA, Calpine, and Olivine for the DER Pilot Program implementation. Now that the planning task is complete, CPA, Calpine and Olivine have been able to

enumerate the content, structure and other provisions in the proposed DER Services Agreement.

## **DISCUSSION**

### **Distributed Energy Resource (DER) Pilot Program and Proposed Agreement**

Generally, DERs are local, geographically dispersed energy resources or technologies that enable customers to shift or reduce their load during certain times of the day. They can also include a generation component. CPA will benefit from DER customers using less energy during demand response events, and the avoided load from DERs can also be aggregated and sold as a resource in the CAISO market. DER programs support customer energy cost reduction, GHG reductions, air quality improvements, help CPA reduce costly energy purchases, and potentially earn revenue from wholesale market participation.

The intention of CPA's DER Pilot Program is to gather valuable data and experience in how to implement these types of programs and begin to build a platform upon which CPA could build other DER programs that emerge from CPA's local programs strategic planning process. If CPA can lower energy procurement costs through implementation of DER strategies, then it can increase the amount of funding to implement these money-saving strategies for customers.

CPA staff, the Energy Committee and the Community Advisory Committee have been engaged in an evaluation and planning process for the DER Pilot Program with Calpine and Olivine for the past 5 months. First, a review and analysis of CPA system load curves and customer load profiles was performed to identify target customer classes for appropriate DER technology that would reduce contribution to system loads during hours of high-priced wholesale energy. A range of program options for these customer classes were then screened based on how well they met certain criteria such as maximizing benefits to the customer, scalability, and opportunities for wholesale market participation. Detailed use case and cost/benefit analysis was then conducted for the eight top-ranking program options to further narrow down the selected program types to three technology pillars for pilot-scale program design and implementation.

The specific programs in the proposed pilot <sup>1</sup> are as follows:

- Smart Thermostats: Residential customers with existing thermostats and/or new thermostats for low income customers.
- Solar + Storage: Commercial and residential customers with existing or new equipment
- EV Charging: Commercial customers with existing equipment

Each of these customer segments will be offered incentives to allow CPA to use their equipment for demand response and/or wholesale market participation. Funds are also available for the purchase and/or installation of new equipment on a limited basis.

### **Olivine, Inc.**

Olivine is an industry leader in DER program design, deployment, and operations. Olivine is currently working with several other California IOUs and CCAs to develop and deploy DER programs, including Sonoma Clean Power, Lancaster Choice Energy, and Marin Clean Energy. Olivine is a CAISO-certified Demand Response Provider (DRP) and Scheduling Coordinator for real-time bidding of DER resources into the wholesale market. Their Olivine Community DER platform can leverage multiple DER technologies, geographic areas, and customer classes into a single bidding structure to meet policy and procurement objectives.

### **DER Services Agreement**

Staff is also seeking approval to authorize the Executive Director to execute the DER Services Agreement which will become Exhibit D to the Calpine contract. The DER Services Agreement is a tripartite agreement between Calpine, Olivine, and CPA for the purpose of implementing and operating the CPA DER Pilot Program. This DER Services Agreement will be incorporated into the current Calpine contract as Exhibit D.

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<sup>1</sup>A fourth program option, Community Solar, was also identified during the planning process but will be implemented separately by CPA using funds dedicated for this purpose by the California Public Utilities Commission.

### Scope of Work

The Scope of Work contemplated in the DER Services Agreement is organized into four phases. Olivine will hold primary responsibility for completing the work for each of the phases, in collaboration with CPA and Calpine.

- Phase 1 will commence upon approval of the DER Services Agreement and will consist of pre-launch activities. These activities include development of marketing collateral and sales tools, integration of customer enrollment interface with CPA website, targeting of high-profile commercial customers for pre-enrollment, and finalization of operational rules and processes.
- Phase 2 will commence in January 2020 with the launch of the DER Pilot Program. Phase 2 activities will concentrate on program marketing and outreach, customer engagement, and enrollment. Completion criteria for Phase 2 will be determined by Olivine's ability to successfully conduct customer verification and data transfers for enrollment.
- Phase 3 will commence in or around June 2020 and will consist of ongoing program operations and testing aggregation of enrolled DER capacity to bid-in to the CAISO wholesale market. This includes CAISO registration of DER resources, aggregation, and value analysis of enrolled DER resources. CPA and Olivine will also work together to develop a bidding strategy for wholesale DER market participation.
- The final Phase will commence no later than November 2020 and will consist of activities to assess the performance of the DER Pilot Program, including an interim assessment, customer surveys, and a final report due no later than 60 days after conclusions of DER Pilot Program operations. Some activities in this Phase may be postponed if parties agree to extend agreement Term.

### Term

The agreement term will begin upon execution of the agreement and extend through March 2021. There is an option to extend for any amount of time up to July 31, 2022, which is the termination date of the Calpine contract. Extension would require an amendment to the DER Services Agreement and may result in additional cost to CPA.



### Program Budget

The total DER Pilot Program budget, including planning, implementation, and incentives, is \$2.85 million. The Board approved FY 2019-20 budget included a \$1.45 million allocation for the DER Pilot Program; the other \$1.4 million will be covered by Calpine. CPA's share is allocated as follows:

- \$800,000 for customer incentives: CPA will pre-pay \$75,000 to Olivine prior to Phase 2, and will maintain a minimum pre-paid balance of \$75,000 during Phases 2 and 3 for eligible customer incentives, rebates, and reimbursement of direct customer installation costs. Olivine will submit supporting invoices to CPA on a monthly basis detailing funds transferred to customers.
- \$300,000 for enhanced marketing services: These funds will cover the development of specialized sales tools and technical support for commercial customers, development of residential and commercial marketing collateral, outreach training for Community Based Organizations (CBOs), social media marketing, and development and support of enrollment technology.
- \$350,000 for CPA-incurred staffing and other direct costs: These funds will be retained by CPA to cover its costs in assisting with the management, marketing and implementation of the DER Pilot.

### Market Risk

The agreement includes provisions accepting CPA's financial risk for Olivine bidding into the wholesale market on CPA's behalf as the DER Scheduling Coordinator. The Scheduling Coordinator is the financially responsible entity in the wholesale market, and there is potential risk associated with bidding DER due to lack of performance or CAISO settlement calculation error. CPA and Olivine will develop a mutually acceptable bidding strategy that mitigates these risks.

### **Proposed Amendment No. 1 to Calpine Agreement**

The DER Services Agreement arises from the Calpine Contract and will be attached to the Calpine Contract. This requires an amendment to the Calpine contract. Therefore, staff is seeking approval to execute Amendment No. 1 to the Calpine agreement, which will make the following changes:

- a) Add and attach the tripartite Distributed Energy Resources (DER) Services Agreement to the original Calpine agreement, forming Exhibit D
- b) Amend Paragraph 1 to include Exhibit D - Distributed Energy Resources Services Agreement
- c) Amend Exhibit A, Section 7.a.vii to clarify that Calpine may seek reimbursement from CPA for direct, documented expenses incurred for printing and mailing of required customer notices

### **Reimbursement for Customer Mailings**

Also included in the Calpine contract scope, unrelated to the DER Pilot Program, are tasks related to customer mailers. In practice, and depending on the size, scope and schedule of mailers, it can reduce CPA's administrative burden to have Calpine handle printing, mailing and postage at CPA's designated printer and mail-house. However, reimbursement of direct costs for printing and mailing are not addressed by the original agreement although the activity and the incurrence of the direct expense is contemplated in Exhibit A to the Calpine contract. The proposed change to Section 7.a.vii of Exhibit A in Amendment No. 1 seeks to address this issue by specifying that CPA may reimburse Calpine for direct, documented costs incurred for printing and mailing of customer notices provided that it falls within CPA's fiscal budget for these services.

All other terms and conditions of the Calpine agreement would remain unchanged, in full force and effect.

### **FISCAL IMPACT**

Work performed by Calpine and most of Olivine's scope under the DER Services Agreement will be provided to CPA at no cost. The FY 2019-20 budget approved by the Board in June 2019 included \$1.45M for the implementation of the DER pilot program. These funds, as noted above, have been earmarked for customer incentives, CPA-incurred implementation costs, and the enhanced marketing and implementation activities performed by Olivine.

Similarly, funds for customer mailings have already been included in the FY 2019-20 budget and will be included in future fiscal year budgeting.

Attachments: 1) Presentation

2) Amendment No. 1 to Calpine Energy Services Agreement

3) Exhibit D – Distributed Energy Resources (DER) Services Agreement



# DER Pilot Program

October 3, 2019

## Background

- CPA has been working with Calpine Energy Solutions and subcontractor Olivine Inc. to plan and implement a proposed Distributed Energy Resources (DER) Pilot Program, expected to launch in January 2020
- DERs are local, geographically dispersed energy resources or technologies that enable customers to increase, shift or reduce load during certain times of the day. Load reductions from DERs can be aggregated and sold as a resource in the CAISO market
- The DER Pilot Program will allow CPA to develop critical learning and capabilities in the DER space, help achieve policy and procurement goals, and inform the broader deployment of local programs

## Olivine Inc.

- An industry leader in DER program design, deployment and operations, Olivine has successfully launched DER programs for other utilities and CCAs
- Olivine will have lead responsibility for implementation activities and operations of the CPA DER Pilot Program
- Olivine will act as Demand Response Provider (DRP) and Scheduling Coordinator for DER Resources, with the ability to aggregate DERs for real time bidding into the wholesale market

## DER Pilot Program Goals

- Achieve CPA policy objectives
  - Improved air quality and public health, GHG reduction, benefits to Disadvantaged Communities, local integration of renewables, local capacity needs and resilience
- Achieve benefits to customers, allowing them to save money and benefit from DER equipment investment
- Achieve CPA procurement goals
  - Allow CPA to test wholesale market participation, avoid RA and wholesale market purchases, and earn revenue from bidding event capacity into wholesale market

# Program Selection Process

CPA and Olivine conducted a rigorous program selection process over the past several months:

1. Conducted review and analysis of CPA system load curves and customer load profiles to identify target customer classes for DER technology deployment that would reduce contribution to system loads during hours of high-priced wholesale energy
2. Developed a detailed screening matrix to identify the top 10 technology use cases from CPA and program participant perspectives
3. Selected of top 8 technology use cases for further analyses, including cost/benefit analysis for CPA and customers
4. Selected of final 3 technology pillars for pilot-scale program design and implementation



## Proposed DER Pilot Program

The proposed program is comprised of three pillars targeting different customer segments, primarily leveraging existing customer equipment

	<u>Description</u>	<u>Target Segment</u>
EV Charging	Pays customers to allow CPA to shed EV charging load during peak times	Commercial & Municipal
Solar + Storage	Pairs onsite solar with battery to help customers manage costs and help CPA shift load	Residential & Commercial
Smart Thermostat	Pays customers who allows CPA to control load remotely with smart thermostats	Residential, including Disadvantaged Communities (DACs)

## EV Charging

Segments: Commercial and Municipal

Target Participation: Up to 50 customers with multiple EV chargers

- Commercial and municipal customers with existing EV smart charging infrastructure will participate in CPA load reduction events that will reduce their EV charging load during the evening ramp (4pm-9pm)
- CPA to provide annual incentive of \$70/kW for participation in load shifting events based on committed capacity

## Solar + Storage

Segments: Residential & Commercial

Target Participation: Up to 600 customers  
(100 commercial, 500 residential)

- Customers with new or existing paired solar and battery storage system will participate in events that allow CPA to call on their battery as a DER resource during the evening ramp
- Customers charge battery with solar during low price periods and battery is discharged during evening peak (4pm-9pm)
- CPA to provide annual incentive of \$70/kW for participation in load shifting events based on committed capacity
- Residential DAC and low-income customers will receive higher incentive rate of \$84/kW

\*For commercial customers, CPA may provide additional incentive funds for battery installation.

# Smart Thermostat

Segment: Residential

Target Participation: Up to 750 customers  
(500 existing thermostat, 250 new)

- Residential customers with new or existing smart thermostats will participate in load control events called by CPA during the evening ramp (4-9pm)
- Program will have options for pre-cooling and event override
- CPA to provide \$75 one-time enrollment incentive for smart thermostat load control program, and ongoing \$50 annual incentive for participation\*
- DAC and low-income customers will receive higher incentive rate of \$90 for enrollment and \$60 for annual participation

\*Customers that buy new thermostats are also able to take advantage of equipment rebates through SCE or SoCal Gas.

## Phased Implementation

- CPA, Olivine, and Calpine are currently working together to meet a 2020 DER Pilot Program launch date

### Phase 1

#### Launch Preparation

Oct 2019 – Dec 2019

- Board approval of DER Services Agreement
- Refine program details
- Develop marketing and sales materials
- Commercial pre-enrollment

### Phase 2

#### Program Launch

Jan 2020 – May 2020

- Marketing and customer engagement through multiple channels
- Customer enrollment

### Phase 3

#### Program Operations

June 2020 – Dec 2020

- Activities related to aggregation of DER resources to bid into the CAISO wholesale market
- Interim report to assess program extension

## Summary and Next Steps

- Today, staff is recommending approval of the DER Services Agreement
- Upon execution of agreement, pre-launch activities to commence, including development of marketing collateral and engagement of high priority commercial customers
- Staff will be communicating with members regarding outreach strategy and providing marketing tools as January 2020 launch date nears
- Member agencies with EV charging infrastructure or battery storage are eligible to participate in the pilot

# Appendix

# DER Programs Reviewed

DER Type	DER Category
Solar PV	Generation
Community Solar	Generation
Solar plus Storage	Generation
Community Solar Plus Storage	Generation
Smart Home Package	Load Control
Electric Vehicle V1G	Load Control
Electric Vehicle V2G	Load Control
Smart Thermostat	Load Control
Resistance Water Heater	Load Control
Heat Pump Water Heater	Load Control
Behavioral Demand Response	Load Control
Pool Pump Load Control	Load Control
Residential Battery	Storage
Community Battery	Storage
Commercial Solar	Generation
Microgrid (PV + Storage)	Generation
CHP	Generation
Fuel Cell	Generation
Automated Demand Response	Load Control
A/C Cycling	Load Control
Pump Cycling	Load Control
Commercial Battery	Storage
Flywheel	Storage



**AMENDMENT NUMBER ONE TO  
CALPINE ENERGY SOLUTIONS, LLC  
PROFESSIONAL SERVICES AGREEMENT**

This Amendment Number One (“Amendment”) to the Professional Services Agreement is made by and between Clean Power Alliance of Southern California (“CPA” or the “Alliance”) and the Calpine Energy Solutions, LLC (“Calpine or Consultant”) on October 3, 2019. CPA and Calpine may individually be referred to herein as a “Party,” or collectively as the “Parties.”

**RECITALS**

WHEREAS, on July 12, 2018, the Board of Directors of CPA (“Board”) approved a Professional Services Agreement between CPA and Calpine (“Agreement”) with an effective date of August 1, 2018; and,

WHEREAS, the scope of services of the Agreement included services related to Customer Electronic Data Exchange, Customer Call Center, and Billing Administration;

WHEREAS, the approved scope of services included Distributed Energy Resource (“DER”) Services, including Demand Response, and authority to enter into a three-party DER services agreement between CPA, Calpine, and Olivine, Inc. (“tripartite DER Services Agreement”) for certain DER program services and to conduct a DER pilot program;

WHEREAS, CPA, Calpine, and Olivine are prepared to enter into the tripartite DER Services Agreement, including the performance of the DER program services and the DER pilot program;

WHEREAS, the Agreement had contemplated that Calpine may, in the absence of CPA designation, choose “a union shop within Los Angeles or Ventura County” for the printing of new move-in customer notices, or opt out confirmation letters as well as the mailing and postage for these notices or letters;

WHEREAS, CPA recognized that the Agreement did not specify the mechanism for the reimbursement of such costs to Calpine;

WHEREAS, CPA finds that Calpine’s handling of the printer, mailing, and postage services can reduce CPA’s administrative burden and desires to allow Calpine to perform some of these services for other types of customer notices from time to time;

WHEREAS, CPA agrees that Calpine should be able to be reimbursed for expenses incurred, as appropriate and as approved by CPA; and,

WHEREAS, CPA finds that in order to be reimbursed for these printer, mailing, and postage services, CPA must direct Calpine to undertake this work, Calpine must provide to CPA appropriate documentation demonstrating that Calpine incurred the direct expense, and that any direct expense must fall within CPA’s fiscal year budget.

NOW, THEREFORE, it is mutually agreed by and between the Parties hereto to amend the Agreement as follows:

1. Exhibit D. DER Services Agreement:
  - a. Tripartite DER Services Agreement shall be added and attached to the Agreement as Exhibit D.
2. Paragraph 1, Exhibits and Attachments: Paragraph 1 of the Agreement shall be amended as follows:

### **1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A - Description of Services

Exhibit B - Payments and Rates

Exhibit C – Joint Review

Exhibit D – Distributed Energy Resources (DER) Service Agreement

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibit A, B, ~~and~~ C, and D in that order.

3. Exhibit A: Section 7.a.vii of Exhibit A to the Agreement shall be amended as follows:
  - vii) Provide customer mailing list to the Alliance designated printer, or only in the absence of an Alliance designated printer at a printer of Contractor's choosing that is a union shop within Los Angeles or Ventura County, for new move-in customer notices, ~~and~~ opt out confirmation letters, or other notices to customers that CPA may direct from time to time ("Notices") to be mailed with appropriate postage within 7 days of receiving an enrollment, ~~or~~ opt out request, or direction from CPA ("Mailing"). The Alliance may approve a reimbursement to Consultant [Calpine] for any direct expenses incurred by Calpine related to the Notices and Mailing; provided that (x) the direct expense does not exceed the fiscal year budget for Notices and Mailing and Calpine issues an invoice to the Alliance for any direct expenses incurred for the Notices and Mailing, and (y)(1) the invoice itemizes the expenses incurred and provides documentation demonstrating that Calpine incurred the expense, or (2) Calpine provides CPA other documentation that CPA may reasonably require to support the expense. For direct expenses, Calpine shall not be entitled to any other payment, including margin, or interest.
4. Except as specifically amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By

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Theodore Bardacke  
Executive Director

Approved as to Form:

By

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Nancy Whang  
General Counsel  
Clean Power Alliance

FIRM: Calpine Energy Solutions, LLC

Print Name of Firm

By

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James M. Wood, President

## **EXHIBIT D**

### **Distributed Energy Resources (DER) Service Agreement**

**Placeholder**

Distributed Energy Resources Services Agreement  
Between Clean Power Alliance, Calpine Energy Solutions, and Olivine, Inc.

October 3, 2019 (“Effective Date”)

**I. RECITALS.**

- A.** Clean Power Alliance of Southern California (“CPA”) desires to deploy a Distributed Energy Resources (“DER”) pilot program (“CPA DER Pilot Program”) in its territory. The goal of the CPA DER Pilot Program is for CPA to gain real-world knowledge of how DER program deployments can be used to help achieve its energy procurement and customer program goals, and to begin to establish a brand presence in the DER program marketplace.
- B.** The purpose of this DER Services Agreement is to detail the timing, scope, budget allocation, reporting and other operational aspects of the CPA DER Pilot Program called for in the contract between CPA and Calpine Energy Solutions, LLC (“Calpine”), dated August 1, 2018 (“Original Contract”).
- C.** Exhibit A - Description of Services to the Original Contract specified a Scope of Work for CPA and Calpine for DER services. Section 3(k) of Exhibit A delineated a number of planning tasks to be jointly conducted by Calpine and Olivine, Inc. (“Olivine”) such that CPA could launch a CPA DER Pilot Program no later than January 2020. Section 3(l) of Exhibit A called for the development of a separate DER Services Agreement between CPA, Calpine, and Olivine to implement certain aspects of a 12- to 18- month CPA DER Pilot Program once it was more defined following the completion of the Section 3(k) planning tasks. CPA, Calpine and Olivine hereby intend to enter into this separate agreement in order to implement the CPA DER Pilot Program (“DER Agreement”).
- D.** Costs for both the planning phase and certain operational aspects of the planning and implementation phase of the CPA DER Pilot Program have been and are to be covered by the monthly per meter fee that CPA pays to Calpine; other operational aspects of the CPA DER Pilot Program, such as incentive payments, enhanced marketing, and internal CPA costs, have been and are to be covered by CPA. The responsibility for and the timing of any payments shall be specified in Section VIII, Budget Allocation and Payment Schedule, below.

**II. PARTIES.**

- 1. CPA, a Joint Powers Authority, is one of the parties to the Original Contract and is sponsoring the CPA DER Pilot Program which will serve end-user customers. CPA holds responsibility for overseeing the CPA DER Pilot Program, participating in customer marketing and outreach, funding program incentives, and integration with other CPA initiatives. CPA has sole authority to approve phase completion or authorize

payments to Olivine, regardless of whether the payments are from Calpine or directly from CPA.

2. Calpine is other party to the Original Contract and is a CPA DER Pilot Program implementation partner, and the lead for customer billing data acquisition and processing for the CPA DER Pilot Program in accordance with the Original Contract. Calpine shall be responsible for providing and processing such available data as specified herein, processing any billing credits as directed by CPA, in accordance with the Original Contract and subject to any limitations to CCA billing services set by Southern California Edison, and for making payments to Olivine, as specified below.
3. Olivine is the overall and lead CPA DER Pilot Program implementer, Demand Response Provider (“DRP”) and Scheduling Coordinator for this CPA DER Pilot Program, using The Olivine Community Program model. Olivine holds lead responsibility for completing each of the phases specified in the Section IV, Scope of Work and Schedule for the CPA DER Pilot Program, and any transition activities including but not limited to the activities, deliverables, completion criteria, or action items identified under each phase. Olivine will lead CPA customer enrollment, manage registration and operations of Demand Response resources, resource creation with CAISO, Demand Response dispatch notifier, resource aggregation, market bidding and program performance calculations, and CPA customer data acquisition and data management as required by Olivine’s responsibilities under this DER Agreement. Olivine is also responsible for the distribution of any customer incentives, rebates, or customer reimbursements as directed by CPA to CPA customers as spelled out in Section VIII.B.1 below. Olivine and CPA will partner on marketing activities.

CPA, Calpine, and Olivine are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.”

In consideration of the terms of this DER Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreement.

### **III. TERM.**

The term of this DER Agreement shall commence on the Effective Date and continue through and including March 2021 (“Term”). The Parties may agree to extend this DER Agreement for any amount of time beyond the Term up to July 31, 2022 (“Extended Term”) upon written amendment to this DER Agreement duly executed by the Parties. Additional costs to CPA may apply for work performed during an Extended Term which is in addition to the work specified in Section IV.

### **IV. SCOPE OF WORK AND SCHEDULE FOR CPA DER PILOT PROGRAM.**

Olivine shall implement and operate the CPA DER Pilot Program as described below consistent with the CPA-Olivine CPA DER Pilot Program Implementation Plan. The CPA DER Pilot

Program is intended to assess the viability and value of different DER Program options within CPA's territory and will be implemented in the following Phases:

**A. Planning Activities.**

Activities specified in Section 3(k) of Exhibit A to Original Contract, which is hereby incorporated by reference herein and the additional activities and milestones specified in Phase 1, below.

***1. Phase 1: Preparation and Pre-Enrollment***

Phase 1 will consist of activities in preparation of the launch of the CPA DER Pilot Program.

**Activities and Key Milestones:**

- Implementation of enrollment materials, residential mobile customer enrollment application, and interface with CPA website
- Development of marketing collateral, including for residential customers, in collaboration with CPA
- Development of sales tools and commercial & industrial enrollment package for pre-enrollment
- Identification and targeting of high priority customers for pre-enrollment
- Development of event trigger strategy
- Finalize program rules and processes

**Completion criteria:** CPA presentation of Olivine-generated commercial sales and enrollment packages to potential customers and CPA's approval of marketing collateral including for residential customers; Olivine's submission of a final draft of the CPA DER Pilot Program Implementation Plan to CPA.

**B. Implementation and Operation Activities.**

Activities specified in Section 3(l) of Exhibit A to Original Contract, which is hereby incorporated by reference herein and the additional activities and milestones specified in Phases 2 and 3, below.

***1. Phase 2: Program Launch Period***

Phase 2 will consist of activities related to CPA DER Pilot Program launch, customer outreach, and enrollment.

**Activities and Key Milestones:**

- Delivery of marketing and customer engagement through multiple channels
- Customer enrollment

- Olivine to train CPA/Calpine Customer Support call center personnel no later than February 1, 2020
- Development of program performance evaluation surveys
- Conduct customer verification and data transfers
- Delivery of technical assistance for commercial customers
- Delivery of Community Based Organization (CBO) outreach partner trainings and support in Disadvantaged Communities (DACs)
- Implementation of reporting

Completion criteria: CPA's acceptance of the complete CPA DER Pilot Program Implementation Plan; Olivine demonstrates the ability to successfully conduct customer verification and data transfers for enrolling residential customers

Timing: Approximately January 2020 to May 2020

## **2. Phase 3: Program Operations**

Phase 3 will consist of activities related to the aggregation of DER resources to bid into the CAISO wholesale market.

### Activities and Key Milestones:

- Aggregation and value analysis of enrolled DER resources
- CAISO registration of DER resources
- Development of bidding strategy in coordination with CPA
- Demand response (DR) events scheduling and customer event notification
- Customer Payments processing and reporting, unless customers are entitled to Customer Payments during Phase 2 pursuant to the Program Launch parameters in which case Customer Payments shall be made during Phase 2.

Completion criteria: Olivine provides a value analysis of enrolled DER Resources; Olivine has set up and processed Customer Payments according to Section VIII.B.

Timing: Approximately June 2020 to December 2020, unless otherwise extended by CPA as provided herein.

## **C. Enhanced Marketing & Implementation Services ("Enhanced Marketing Services").**

The activities and milestones for the Enhanced Marketing Services are contained in Phases 1-3. Completion criteria and timing for Enhanced Marketing Services shall follow those contained in Phases 1-3.



#### **D. Final: Pilot Program Assessment.**

Final Phase to consist of activities to assess performance of CPA DER Pilot Program.

##### **Activities and Key Milestones:**

- Interim Assessment submitted to CPA by no later than November 2020
- Develop and conduct final program performance evaluation surveys
- Draft Final Report due to CPA no later than 60 days after completion of Phase 3
- Olivine shall finalize the Final Report, taking into consideration edits and comments of CPA, within 30 days after submission of Draft Final Report but no later than the end of the Term.

**Completion criteria:** Olivine completion of Final Report.

**Timing:** Approximately October 2020-March 2021, unless otherwise extended by CPA as provided herein.

#### **V. REPORTING REQUIREMENTS.**

Olivine shall provide CPA a measurement of the selected metrics specified below, through a monthly status report to CPA. Olivine acknowledges and agrees that this reporting is material to this DER Agreement as it will provide CPA and Olivine the opportunity to change the implementation strategy of the CPA DER Pilot Program. Olivine and CPA agree to have a management review meeting of the CPA DER Pilot Program no less than 6 (six) times during the Term.

Metrics to be collected and reported are:

- Direct mailings to customers; mailings to DAC and Low-Income customers
- Customer visits to websites and app; visits by enrolled DAC and Low-Income customers
- Direct communications or surveys of customers; DAC and Low-Income customers
- Customers enrolled; DAC and Low-Income customers enrolled
- kWh energy savings
- kW demand savings
- Customer cost reductions
- Increase in renewable power mix
- Wholesale energy procurement savings
- Resource Adequacy yield
- Marketing dollars spent on DAC and Low-Income customers
- Incentives provided to DAC and Low-Income customers
- Net CO<sub>2</sub> emissions

- Net NO<sub>x</sub> and PM10 emissions
- DR events

Specific metrics are subject to change upon agreement of CPA and Olivine as final methodologies are determined and implemented. Notwithstanding the foregoing, Olivine acknowledges and understands that CPA considers the foregoing metrics to be core to evaluating the CPA DER Pilot Program. CPA acknowledges and understands that certain of the foregoing metrics are not able to be updated every month because they are based on figures from third-party entities which report based on a lag time; Olivine shall report the most recent metric available.

Calpine shall not be entitled to any reporting from Olivine.

#### **VI. APPROVAL OF MARKETING MATERIALS.**

Olivine intends to develop co-branded marketing materials for the CPA DER Pilot Program. Development of these materials should incorporate CPA's logo and follow CPA's brand and design guidelines to the extent feasible, and Olivine is authorized to utilize CPA's logo on the co-branded marketing materials it develops for the CPA DER Pilot Program provided that Olivine gives CPA at least five calendar (5) days notice of its intended use. Olivine shall submit all marketing materials to CPA for approval prior to production and release.

#### **VII. MARKET AND OPERATIONAL RISK.**

The CPA DER Pilot Program is being implemented under Olivine's DER Community Program model and during the Term of the DER Program Pilot Olivine will be CPA's exclusive Demand Response Provider (DRP)/Distributed Energy Resource Provider (DERP) and Scheduling Coordinator for DER Resources. As the financially responsible entity in the CAISO wholesale markets, Olivine will assess resources for market requirements and risk before bidding in the market and develop a mutually acceptable bidding plan with CPA. CPA accepts and acknowledges financial responsibility for resources bid on their behalf provided that the resources bid was expressly directed by CPA in writing. Olivine may use capabilities to test resources outside of market and calculate baselines and settlements in support of the DER Program Pilot.

#### **VIII. BUDGET ALLOCATION AND PAYMENT SCHEDULE.**

The CPA budget for the CPA DER Pilot Program is a total of \$2,850,000 of which \$1,700,000 will be provided to Olivine for Planning, Implementation and Operations, and Enhanced Marketing & Implementation Activities of the CPA DER Program, inclusive of tasks specified in Section 3(k) and Section 3(l) of the Original Contract. CPA has budgeted \$800,000 for direct customer payments (rebates, incentives, or direct implementation costs) some of which will be deployed by Olivine, at CPA's direction.

<b>Budget Item</b>	<b>Budget Amount</b>	<b>Original Contract Reference</b>
Planning Activities	\$500,000	Section 3(k) of Exhibit A to Original Contract
Implementation and Operations Activities	\$900,000	Section 3(l) of Exhibit A to Original Contract
Enhanced Marketing & Implementation Services	\$300,000	Section 3(k) of Exhibit A to Original Contract
<b><i>Subtotal Planning and Implementation</i></b>	<b><i>\$1,700,000</i></b>	
Rebates, Incentives and Direct Implementation Costs to Customers.	\$800,000	Included in this Agreement; deployed through several channels
CPA Staff and Direct Costs	\$350,000	Not Included in this Agreement
<b>TOTAL Program Costs</b>	<b>\$2,850,000</b>	

Based on the foregoing budget allocation, Calpine and CPA shall make the following payments to Olivine.

**A. Calpine Payment to Olivine.**

1. Calpine shall provide Olivine a payment associated with Section 3(k) and Section 3(l) activities in the amount of \$600,000 following execution of this Agreement and submission of a final draft of the CPA DER Pilot Program Implementation Plan to CPA.
2. Calpine shall provide Olivine a payment associated with Section 3(l) activities in the amount of \$100,000 upon CPA's acceptance of the complete CPA DER Pilot Program Implementation Plan which shall be submitted prior to CPA DER Pilot Program launch but no later than January 2020.
3. Calpine shall provide to Olivine a payment of \$60,000 per month to be paid at the beginning of each month subsequent to CPA DER Pilot Program launch for a period of 11 months for a total of \$660,000 for work associated with Section 3(l) activities. Data analysis and Call Center Training are included in this funding source.

4. Calpine shall provide Olivine a payment of \$25,000 for completion of the Interim Assessment specified in Section IV.D., and \$15,000 for completion of a Final Report, the completion criteria in Section IV.D. due within 90 days of completion of Phase 3 Program Operations but no later than the end of the Term.
5. Olivine shall issue an invoice to Calpine with a copy to CPA for each of these payments referenced above.
6. The total payments from Calpine to Olivine will not exceed \$1,400,000, unless agreed upon by the Parties in writing.
7. Calpine will make payments to Olivine in accordance with the above schedule on a net 15 day basis following receipt of invoice, subject to the following conditions: (a) provided that CPA has not notified Calpine that Olivine is in default under this DER Agreement and (b) this DER Agreement has not been terminated. This paragraph shall be subject to the terms in Section IX.C.

**B. CPA Payment to or Reimbursement of Olivine.**

1. CPA will prepay to Olivine \$75,000 prior to Phase 2 and will maintain a minimum prepaid balance of \$75,000 with Olivine during Phases 2 and 3 (the “Prepaid Balance”) for eligible customer incentives, rebates and reimbursement of direct customer installation costs to support the CPA DER Pilot Program (collectively, “Customer Payments”). Olivine shall segregate the Prepaid Balance in a separate account and shall not commingle the Prepaid Balance with any of Olivine’s funds or other accounts. Olivine shall disburse Customer Payments to eligible CPA customers by drawing down on the Prepaid Balance. Any process for the transfer of Customer Payments must be authorized by CPA in writing.
2. Olivine shall submit to CPA at least on a monthly basis an invoice for any Customer Payments, supporting invoices detailing actual funds transferred to customers to pay Customer Payments and other supporting documentation reasonably requested by CPA. CPA shall pay Olivine within 30 calendar days from the date of the invoice (a) for any amounts drawn down from the Prepaid Balance; or (b) in the event that the Customer Payments exceeds the Prepaid Balance, shall pay Olivine for any amounts paid by Olivine and any amounts needed to maintain the Prepaid Balance.
3. Olivine acknowledges and agrees that the funds in the Prepaid Balance are property of CPA, not Olivine, and the transfer of funds to the Prepaid Balance does not constitute a payment from CPA to Olivine. Under no circumstance shall the amount of funds transferred to Olivine by CPA exceed \$800,000. Any amounts in the Prepaid Balance at the end of Term, Extended Term (if

applicable), or upon termination or expiration of this DER Agreement shall be returned to CPA within two (2) business days regardless of any dispute between the Parties. Olivine shall not be entitled to use the Prepaid Balance to set off any payments or expenses CPA or Calpine may owe Olivine.

4. CPA shall pay Olivine up to \$300,000 for Enhanced Marketing Services, payable in five (5) increments as follows:
  - a. Prior to the commencement of Phase 1 of the CPA DER Pilot Program, CPA shall pay to Olivine \$100,000 for Enhanced Marketing & Implementation Services activities related to Phase 1.
  - b. Prior to the commencement of Phase 2, CPA shall pay Olivine \$50,000 for Enhanced Marketing & Implementation Services activities related to Phase 2.
  - c. Upon meeting the completion criteria of Phase 2, CPA shall pay Olivine \$50,000 for Enhanced Marketing & Implementation Services activities performed during Phase 2.
  - d. Prior to the commencement of Phase 3, CPA shall pay Olivine \$50,000 for Enhanced Marketing & Implementation Services activities related to Phase 3.
  - e. Upon meeting the completion criteria of Phase 3, CPA shall pay Olivine \$50,000 for Enhanced Marketing & Implementation Services activities performed during Phase 3.
  - f. Olivine shall invoice CPA for each of these payments and shall specify the contract provision (for example, VIII.B.2.b.) for which payment is requested.

Any disputes concerning an invoice or payment shall be subject to the Disputes provision.

Except for the payments expressly specified herein, Olivine shall not be entitled to receive any other payment from CPA or Calpine during the Term for the services Olivine provides or has provided relating to the CPA DER Pilot Program.

## **IX. EXPIRATION/TERMINATION.**

### **A. Expiration.**

This DER Agreement shall expire at the end of the Term, unless extended by the Parties in writing 60 days prior to the termination date.

### **B. Termination.**

CPA or Olivine may choose to terminate this DER Agreement in its entirety, or any part thereof, for (“default”) or without cause (“convenience”) after the first six months of the Effective Date upon thirty (30) days written notice. To terminate for default under this section, the terminating Party will give the Defaulting Party (or Parties) a reasonable period of time to cure the default, which in no case shall be less than fifteen (15) calendar days. If the time to cure expires or the

Defaulting Party (or Parties) is unable or unwilling to cure the default, then the “Disputes” section XII.D. shall apply.

If a termination is for default, any amounts owed will be subject to the “Disputes” section.

**C. Payments in the Event of Termination or Expiration.**

In the event of a termination or expiration of this DER Agreement, Calpine or CPA shall make any outstanding payments owed to Olivine based upon the schedule set forth in Section VIII above provided that Olivine has completed the tasks specified in the Scope of Work and Schedule (Section IV). Payments based on time (e.g., monthly payments) shall be pro-rated to the date of termination or expiration. Payments based upon activities or Phases shall be negotiated by the Parties, and subject to the Disputes section if the Parties are unable to agree.

**D. Survival of Provisions.**

The following provisions of this DER Agreement shall survive upon termination or expiration: VII, IX.C., IX.D, X, XI, XII.C., D, J, and K., and Section 12, 14, 19, 21, and 22 contained in the Flowdown Provisions specified in XII.A..

**X. OWNERSHIP.**

To the extent permitted by law as related to customer or customer-related data, CPA shall own, or retain all right, title and interest in and to all customer or customer-related data gathered or created by Olivine in the performance of the services pursuant to this DER Agreement, (“CPA Data”), all proprietary information provided by CPA to Olivine in connection with this DER Agreement (“CPA Information”), and all finished or unfinished website content, writing and design of marketing materials or customer communication materials including but not limited to channels, messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared by Olivine, its officers, employees and agents as deliverables for CPA Scope of Work and Schedule of this DER Agreement (“CPA Materials”). CPA Data, CPA Information and CPA Materials shall collectively be referred to as “CPA Product.” CPA grants Olivine the right to use of CPA Product throughout the Term of this Agreement.

After the Term, CPA shall have the exclusive right to use CPA Product in its sole discretion without further compensation to Olivine or to any other party. Upon the expiration of this Agreement, or in the event of termination, all CPA Product, in whatever form and in any state of completion, shall remain the property of CPA, shall be promptly returned to CPA, and shall not be used by Olivine without the express written permission of CPA. Upon termination, Olivine may make and retain a copy of CPA Materials if permitted by law and in compliance with Olivine’s data retention and disposal policy.

For the avoidance of doubt, all of Olivine’s patents, copyrights, trade secrets, internal systems, applications, know-how, programs, software, trademarks, and internal documentation, whether

existing as of the Effective Date or created thereafter, shall be and remain the exclusive property of Olivine.

## **XI. TRANSITIONAL PHASE.**

After the expiration or termination of this DER Agreement, Calpine and Olivine will transfer (i) all CPA Product with the exception of any customer data not permitted to be transferred to CPA under applicable law and regulation and (ii) any installed equipment to CPA, both at no additional cost.

## **XII. ADDITIONAL PROVISIONS.**

### **A. Flowdown Provisions.**

The work to be done hereunder by Olivine satisfies a portion of the work required of Calpine under the Original Contract.

Olivine agrees and acknowledges that it shall be bound by the terms and conditions of sections 7, 8, 10, 12, 13, 14, 15, 17, 19, 20, 21, 22 in the Original Contract and shall strictly comply with those terms and conditions, in the same manner and extent as Calpine is bound to CPA with respect to those sections. All rights and remedies reserved to CPA under the Original Contract shall apply to and be possessed by CPA in its dealings with Olivine.

CPA agrees and acknowledges that the work set forth in this DER Agreement satisfies, in full, Sections 3(k) and 3(l) of Exhibit A to the Original Contract.

Calpine agrees, subject to the terms of this DER Agreement, and acknowledges that it is responsible to Olivine for the payments set forth in Section VIII. Olivine agrees and acknowledges that Calpine's liability to Olivine is limited to the Calpine payments set forth in Section VIII, and that Calpine's responsibility to Olivine under this DER Agreement is limited to providing appropriate data required to provide services identified in this DER Agreement.

### **B. Use of Subcontractors.**

Olivine may choose to implement certain tasks with subcontractors and/or vendors with prior written notification to CPA. CPA reserves the right to approve subcontractors and/or vendors. Any approval of subcontractors and/or vendors shall be in writing and shall not be unreasonably withheld.

### **C. Confidential Information.**

1. CPA and Olivine mutually agree that each of them will hold, as a Receiving Party, all confidential information of the other Party, as a Disclosing Party, in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any of the Disclosing Party's confidential information, except to the extent necessary to carry out the Receiving Party's or its representatives' respective

responsibilities under this DER Agreement or as directed or authorized by the Disclosing Party.

2. Confidential information shall not include: (1) information that is generally available to the public or in the public domain at the time of disclosure; (2) information that becomes publicly known other than through any breach of this DER Agreement by Receiving Party or its representatives; (3) information which is subsequently lawfully and in good faith obtained by the Receiving Party from a third party, as shown by documentation sufficient to establish the third party as the source of the confidential information; provided that the disclosure of such information by such third party is not in breach of a confidentiality agreement or other similar obligation of confidentiality; (4) information that the Receiving Party develops independently without use of or reference to confidential information provided by the Disclosing Party; or (5) information that is approved for release in writing by the Disclosing Party.
3. Notwithstanding the foregoing to the contrary, a Receiving Party or its representatives may, without being deemed to violate this section, make such disclosures as are required in the ordinary course of its business to regulatory agencies (e.g. FERC, Cal-ISO, etc.), provided that the Receiving Party gives the Disclosing Party five (5) business days advance notice of potential disclosure.

**D. Dispute Resolution.**

1. In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with the DER Agreement, a Party (the “Notifying Party”) may deliver to another Party or Parties (the “Recipient Party”) notice of the Dispute with a detailed written description of the underlying circumstances of such Dispute (a “Dispute Notice”) and the requested remedy or relief.
2. Following delivery of the Dispute Notice, representatives of the Parties shall meet and confer as often as they deem reasonably necessary for a thirty (30) day period and engage in good faith negotiations to resolve the Dispute to the satisfaction of each Party.
3. In the event a Dispute is not resolved pursuant to the procedures set forth in this section by the expiration of the thirty-day (30) period, then may pursue any legal remedy available to subject to Section 21 of the Original Contract.



#### **E. Notices.**

Any notice, request, demand, or other communication required or permitted under this DER Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of CPA, to:

Name/Title: Ted Bardacke, Executive Director  
Address: 555 W 5th Street, 35th Floor, Los Angeles, CA 90013  
Telephone: (213) 269-5870  
Email: [tbardacke@cleanpoweralliance.org](mailto:tbardacke@cleanpoweralliance.org)

In the case of Calpine, to:

Name/Title: Calpine Energy Solutions, LLC;  
Attn: Legal Department  
Address: 401 W A Street, Suite 500. San Diego, CA 92101  
Telephone: 619-684-8251  
Email: [Sean.White@calpinesolutions.com](mailto:Sean.White@calpinesolutions.com)

In the case of Olivine, to:

Name/Title: Olivine, Inc.;  
Attn: Elizabeth Reid, CEO  
Address: 2120 University Ave., Berkeley, CA 94704  
Telephone: 408-759-0360  
Email: [breid@olivineinc.com](mailto:breid@olivineinc.com)

#### **F. Severability.**

Should any provision of this DER Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this DER Agreement, but rather, the remainder of the DER Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.

#### **G. Amendments.**

None of the terms and conditions of this DER Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Parties.

#### **H. Complete Agreement.**

In addition to the sections of the Original Agreement identified in the Flowdown provision, this DER Agreement constitutes the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. Failure of any Party

to enforce any provision or provisions of this DER Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this DER Agreement.

**I. Counterparts.**

This DER Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**J. Limitation of Liability.**

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS DER AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING PARAGRAPH, BUT EXPRESSLY SUBJECT TO THE LIMITATION ON TYPES OF DAMAGES IN THE FOREGOING PARAGRAPH, CPA SHALL HAVE THE FULL BENEFIT OF THE INDEMNITY OF SECTION XII.K. NOTWITHSTANDING THE FOREGOING PARAGRAPH, ANY UNPAID AMOUNTS SPECIFIED IN SECTION VIII SHALL BE CONSIDERED DIRECT OR ACTUAL DAMAGES TO THE EXTENT THOSE PAYMENTS ARE DUE AND OWED TO OLIVINE. .

THE PROVISIONS OF THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

**K. Indemnification.**

Olivine shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CPA and Calpine, their respective directors, employees, officers, agents and volunteers, from and against, any and all liability, including but not limited to demands, claims, actions, fees, costs

and expenses (including attorney and expert witness fees as determined by a court or established by law), (collectively “Claims”) arising from and/or relating to this DER Agreement but (1) for all Claims, only to the extent that such Claims are caused by Olivine’s negligent acts, errors or omissions, or the negligent acts, errors or omissions of Olivine’s officers, employees, agents, or subcontractors while in the performance of the terms and conditions of the DER Agreement; or (2) for Claims for which Calpine seeks indemnification, to the extent such Claims are based upon Olivine’s status as a subcontractor of Calpine or otherwise under Calpine’s direction and control; except for such loss or damage arising from the negligence or willful misconduct of CPA or Calpine, or their respective directors, officers, employees, agents and/or volunteers.

This Indemnification shall apply only to the extent of Olivine’s acts and omissions, which shall be deemed to include any contractor, subcontractor, agent, and/or employee of Olivine. In addition to Olivine, as used in this Section XII.K., “Olivine” shall include any other person or entity under Olivine’s direction or control, including any subcontractors or vendors performing work for this DER Agreement. A party claiming indemnification under this section (an “Indemnatee”) shall promptly notify Olivine in writing of any Claim for which it claims indemnification, cooperate with Olivine in the defense thereof and all related settlement negotiations, and allow Olivine lead control over the defense and settlement of such tendered Claim, however Olivine shall allow the Indemnatee to provide input into the defense strategy and the Indemnatee shall have the right to review and consent to any settlement or related agreement.

For the avoidance of doubt, nothing in this section shall be interpreted to require Olivine to indemnify, defend or hold harmless: (a) CPA for any Claim advanced by Olivine against CPA or by CPA against Olivine; or (b) Calpine for any Claim advanced by Olivine against Calpine or by Calpine against Olivine.





## Staff Report – Agenda Item 12

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Natasha Keefer, Director of Power Planning & Procurement  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Presentation on Long-term Power Contracting  
**Date:** October 3, 2019

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At the October 3, 2019 Board meeting, Natasha Keefer, Director of Power Planning & Procurement, will provide a presentation on CPA's long-term power contracting status and process, including the 2019 Clean Energy Request for Offers (RFO).

**Attachment:** 1) 2019 Clean Energy RFO Presentation



# Update on Renewable Energy Contracting

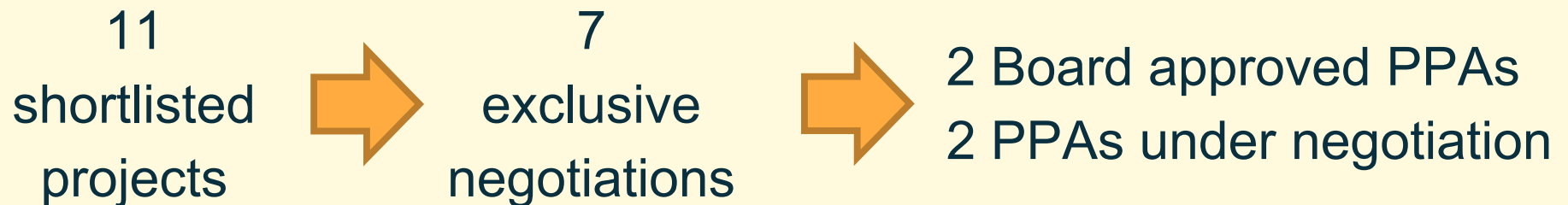
October 3, 2019

# Agenda

- Status of current long-term renewable energy contracts
- Procurement drivers
  - Long-term compliance requirement
  - Cost savings through long-term pricing
  - Portfolio diversification – renewables integration and GHG reduction
- Overview of 2019 Clean Energy RFO

## Summary of Long-term Contracting Activities

- CPA launched its first Clean Energy RFO in October 2018, with the goal of contracting for 1-2 million MWh of renewable energy
- CPA requested offers from renewable, renewable plus storage, and standalone storage projects
- CPA received a robust response from over 230 facilities
- The RFO resulted in 1.2 million MWh of contracted generation<sup>1</sup>:



- Board also approved 2 contracts via bilateral negotiations

(1) Includes solar + storage PPA currently under negotiation



# Current Long-term Portfolio and Projects Under Negotiation

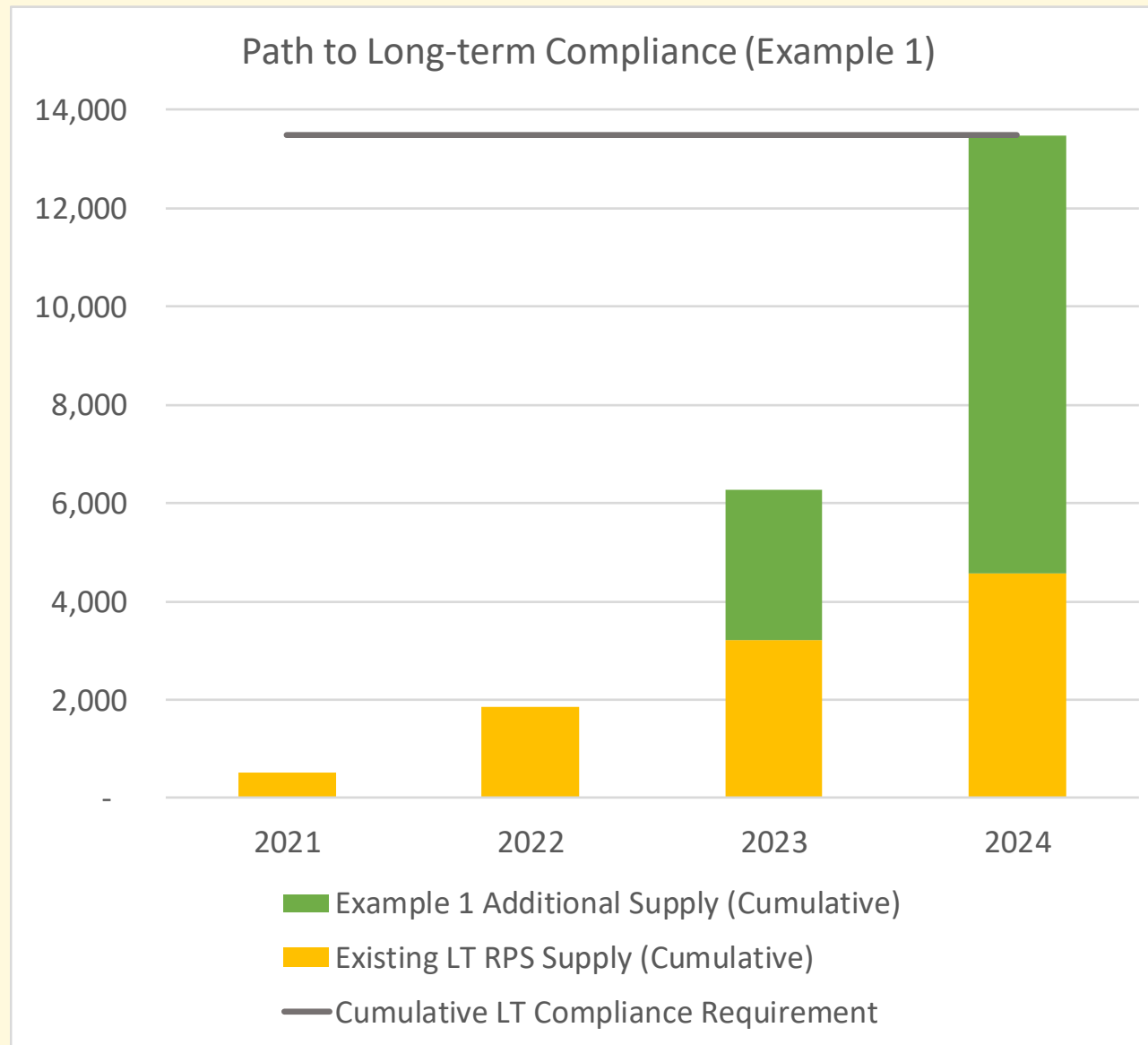
Project	Type	MW	Online Date	Source	Status
Voyager	Wind	21.6	Operational	Bilateral	Executed
Arlington	Solar	233	12/31/2021 <sup>1</sup>	2018 Long-term RFO	Executed
Golden Fields	Solar	40	3/31/2021	2018 Long-term RFO	Executed
Isabella	Hydro	11.9	Operational	Bilateral	Executed
Solar + Storage	Solar + Storage	123	12/31/2021	2018 Long-term RFO	Under negotiation
Moorpark Storage	Standalone Storage	60	12/31/2022	2018 Long-term RFO	Under negotiation
White Hills	Wind	300	12/31/2020	Bilateral	Pending approval

(1) Phase 1 (100 MW) online by 12/31/2021, Phase 2 (133 MW) online by 12/31/2022

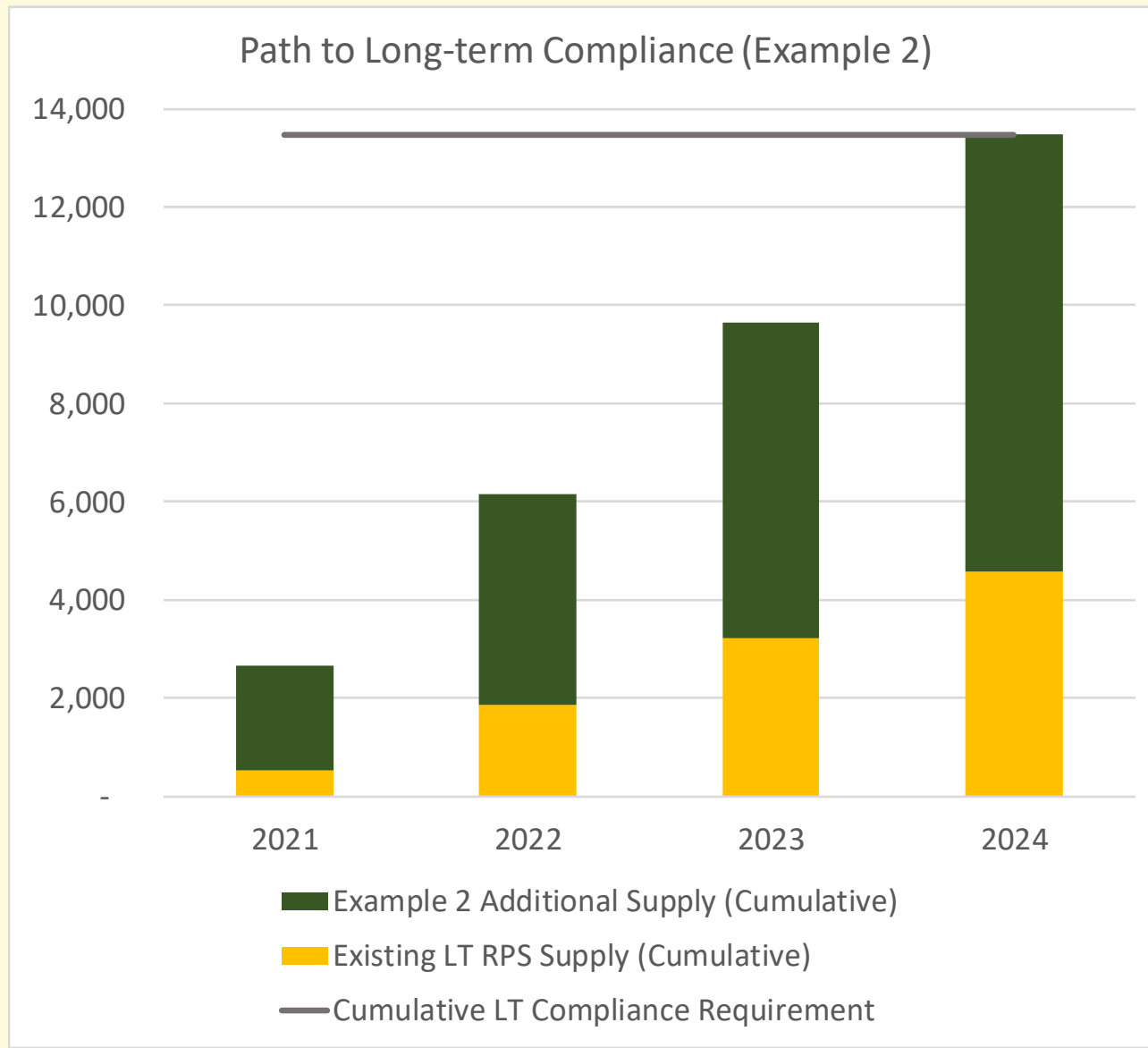
## Long-Term Procurement Requirement and Project Timing

- SB 350 requires CPA to secure at least 65% of its RPS energy obligations through long-term (10+ years) contracts over the 2021-2024 compliance period
- Projects with earlier online dates help CPA meet its compliance requirement early and reduce catch up that would need to be made in later years (examples on next slides)
- Meeting compliance requirements in the near term allows CPA to become more selective over time in terms of price, location, innovation
- Opportunities to contract with new-build resources with 2020 and 2021 online dates are limited due to development timelines

## Path to Compliance Example – Late Online Dates



## Path to Compliance Example – Early Online Dates

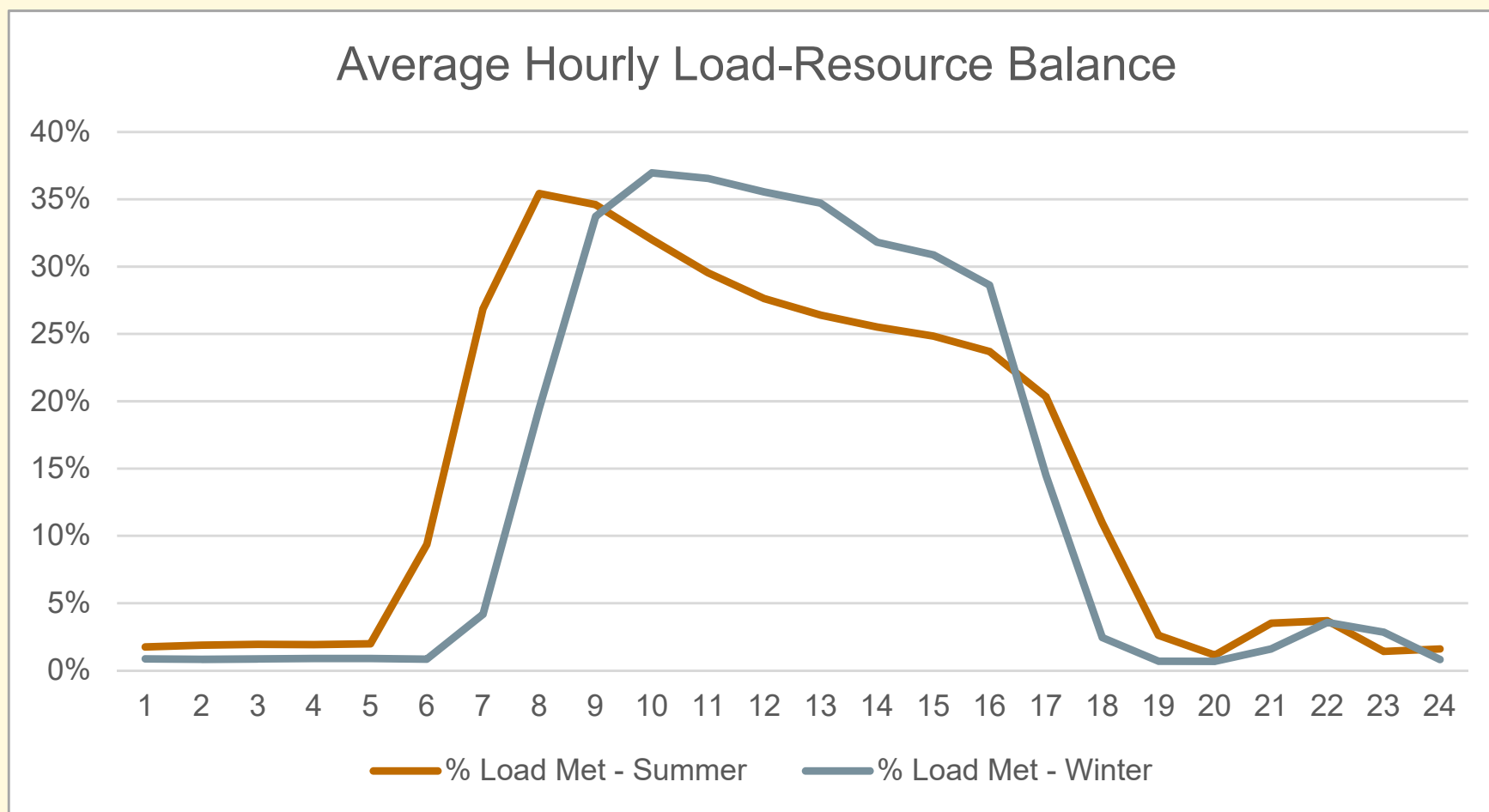


## Portfolio Diversity is Critical

- Resource diversity will be an important consideration in portfolio selection
- Most renewable energy supply is anticipated to come from solar resources, therefore other resources that generate significant output during the nighttime will improve CPA's supply shape compared to load and help with overall renewable integration
- CPA can reduce its portfolio greenhouse gas content by offsetting nighttime system generation that is largely provided by gas-fired resources with emissions-free renewable supply
- Wind, geothermal, small hydro and resources paired with storage all can provide nighttime renewable energy supply

# Hourly Power Supply

- Average supply over a day from CPA's current long-term contracts



## 2019 Clean Energy RFO

- CPA plans to launch its 2019 Clean Energy RFO in October
  - Targeting another 1-2 million MWh of annual generation
- To enhance competitiveness of smaller local projects, two tracks will be used:
  - **Utility-Scale Procurement Track** (10 MW or larger)
  - **Distributed Procurement Track** (less than 10 MW and located in Los Angeles and Ventura counties)
- A “fast-track” procurement process is also being contemplated for GHG-free Resource Adequacy capacity (such as battery storage) as a result of the recent proposed CPUC decision

## 2019 Clean Energy RFO Evaluation Criteria

- **Utility-Scale Procurement Track** will use the same evaluation criteria as 2018, with *preferences* for local and in-state locations, projects on already disturbed land, Project Labor Agreements and benefits to DACs
- **Distributed Procurement Track** will have additional *mandatory* Workforce Development criteria and enhanced locational and environmental preferences suited to urbanized areas and to reduce local air pollution
- **Both Tracks** will be used as data benchmarks for CPA's 2020 Integrated Resources Plan (IRP), where a target amount of local procurement as a percentage of overall long-term procurement will be proposed to the Board



## 2019 RFO Schedule

Date	Action
Mid-October	Launch 2019 Clean Energy RFO
Late-October	Conduct RFO Bidder Webinar
Mid-November	Bids Due
Mid-December	Longlist Selection
Mid-January	Energy Committee Shortlist Approval
Early February	Exclusivity Agreements Due
February – April	PPA Negotiations
May – June	Board Consideration of PPAs

*Schedule may be subject to change*





## Staff Report – Agenda Item 13

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**To:** Clean Power Alliance (CPA) Energy Committee  
**From:** Natasha Keefer, Director of Power Planning & Procurement  
**Approved By:** Ted Bardacke, Executive Director  
**Subject:** Mohave Wind Farm Long-Term Power Purchase Agreement  
**Date:** October 3, 2019

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### **REQUESTED ACTION**

Approve a 20-year power purchase agreement (PPA) with the Mohave County Wind Farm, LLC (Mohave Wind) project, and authorize the Executive Director to execute the Mohave Wind PPA.

### **BACKGROUND**

On September 4, 2019, staff presented a time-sensitive opportunity to the Energy Committee to secure a 20-year Power Purchase Agreement (PPA) with a 300 MW wind project with expected output of approximately 830,000 MWh/year to the Energy Committee. The developer is NextEra Energy and the PPA offered to CPA is part of a larger 350 MW wind project with a commercial online date (COD) of December 31, 2020. The Energy Committee was supportive of staff proceeding with bilateral negotiations, consistent with the review process of other long-term bilateral PPAs reviewed by the Energy Committee and subsequently approved by the Board.<sup>1</sup> Staff has completed negotiations and is presenting the PPA for the consideration by the Board.

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<sup>1</sup> Long-term bilateral awards are consistent with CPA's Energy Risk Management Policy.

**DISCUSSION****PROJECT OVERVIEW**

The project is a 300 MW portion of a larger 350 MW wind facility located in Mohave County, Arizona in the vicinity of Lake Mead. While the project is physically located in Arizona, the project output would be delivered directly into the CAISO using long-term, firm transmission rights via the significant amount of transmission infrastructure in and around the Hoover Dam. As such, the project would be a PCC1 renewable energy resource, which is the highest value product for RPS compliance.

**PROJECT BENEFITS**

The project has three unique and valuable attributes for CPA: a 2020 COD, resource diversity, and cost savings.

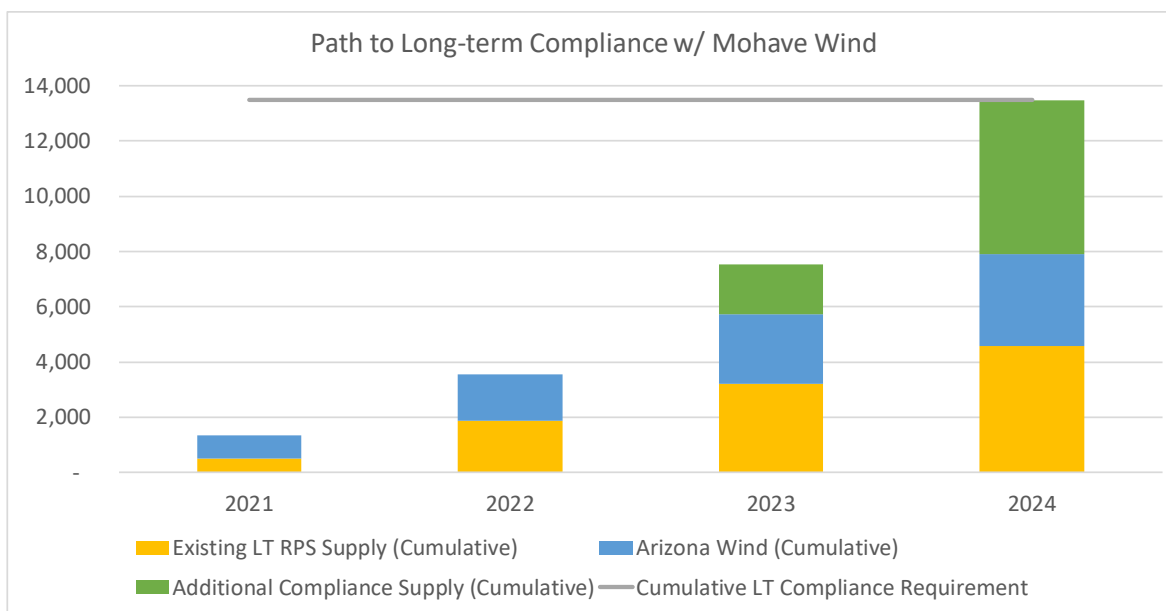
**Early Online Date**

Projects with a 2020 commercial date are valuable to CPA because they reduce procurement costs and help alleviate CPA's significant long-term contracting compliance obligations<sup>2</sup>. Opportunities to contract with new-build resources with a 2020 online date are limited due to the timeline for new-build projects to secure offtake agreements ahead of construction.

Below is a chart showing CPA's current resources under contract, this Mohave Wind project, and the remaining resources CPA will still need to secure for the rest of the compliance period should the project be approved:

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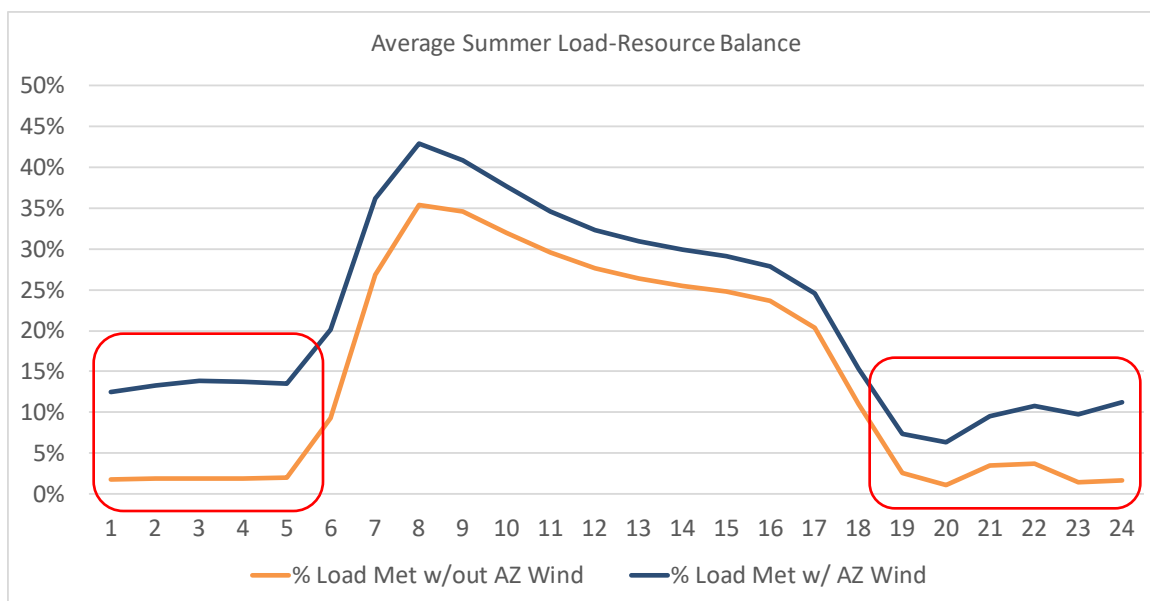
<sup>2</sup> SB 350 requires CPA to secure at least 65% of its RPS obligations through long-term (10-years or longer) contracts over the 2021-2024 compliance period.



If CPA were to procure this contract with a 2020 COD, there would be less risk to CPA to bring on additional resources in the latter half of the compliance period and there would be less need to over-procure in the latter half of the compliance period to make up for a shortfall in the first half of the compliance period.

### Resource Diversity

Wind resources are particularly attractive because they have a complementary output shape to solar. The Mohave Wind project is expected to generate significant output during the nighttime, improving CPA's supply shape compared to load and providing greenhouse gas-free generation during high emissions hours when solar is not generating. Below is a comparison of CPA's existing long-term renewable energy portfolio for an average summer day, with and without the Mohave Wind output:



Securing portfolio resources with complementary profiles to solar is critical for CPA's ability to manage its load-resource balance and minimize its portfolio greenhouse gas content.

However, opportunities for securing new wind resources in California are limited. Comparing across the West, The Nature Conservancy recently estimated approximately 25 GW of wind potential in California versus approximately 360 GW of wind potential in the four southwestern states of Nevada, Arizona, New Mexico and Utah.<sup>3</sup> The current CAISO interconnection queue also highlights the limited availability of near-term in-state wind opportunities. The interconnection queue shows 10 in-state wind projects (1,395 MW) with 2020-2022 online dates. However, only 5 of the projects totaling 550 MW have executed interconnection agreements, and several of these projects have already been contracted with other offtakers.

In the 2018 Clean Energy RFO, CPA received a majority of offers from solar or solar plus storage and offers for only 8 wind projects. Of these wind projects, half were located out-of-state. The one in-state wind project that was selected by CPA in its 2018 RFO withdrew its offer prior to negotiations because it had already found another buyer.

<sup>3</sup> From the Power of Place Study – unconstrained, Siting Level 1 case

**Cost Savings**

Beyond meeting compliance obligations, a 2020 COD is valuable because proposed pricing for this contract is significantly less than short-term renewables, helping CPA remain competitive for all rate products and pursue its goal of reducing the cost premium between its 100% Green rate and the Lean and Clean rates. Beginning in 2021, the Mohave Wind project translates into a savings of approximately \$8 million annually compared to procuring renewable energy via short-term contracts.

**EVALUATION CRITERIA****Value**

Value for this offer is competitive compared to wind resources offered in the 2018 Clean Energy RFO, both for in-state and out-of-state wind.

**Development Risk**

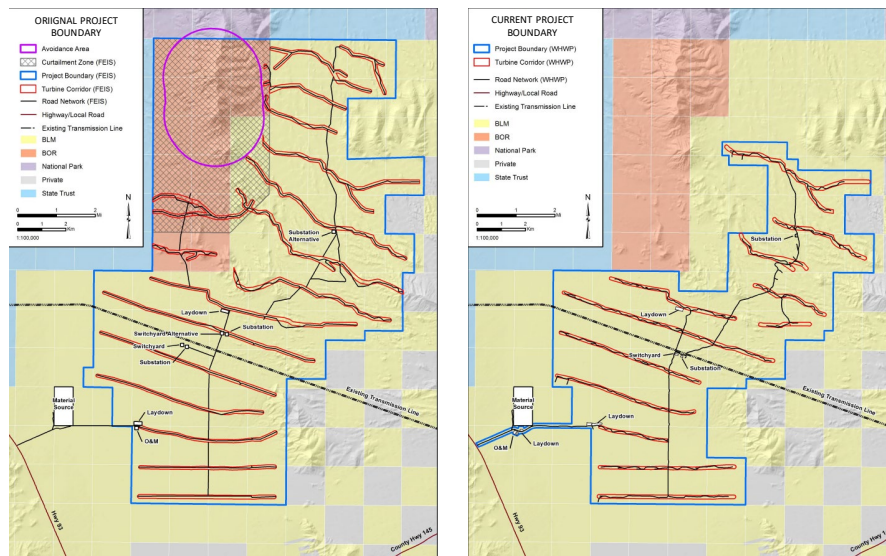
This project is a late-stage development and highly de-risked. The project's interconnection agreement is already executed, major permits have been obtained, and a portion of turbines have been procured. The remaining 50 MW of the project have already been secured with another offtaker. NextEra will self-finance the project through construction and is comfortable with CPA's credit profile.

**Workforce Development**

The developer anticipates that the project will create approximately 300 jobs during the construction phase and 10 permanent jobs during the operations phase. The developer has committed to using IBEW labor for electrical work on the project and to set specific local/targeted hiring goals. Additionally, the developer has committed to investing \$1 million in workforce development efforts in Los Angeles and Ventura Counties over the next four years. CPA will have control over this the spending of these funds will work with interested stakeholders on an investment plan for these funds. These workforce development commitments are reflected in Section 13.4 of the PPA.

## Environmental Stewardship

The project has secured a Bureau of Land Management right-of-way and has completed the National Environmental Policy Act (NEPA) environmental review process. During this process, NextEra made several changes to the project to reduce its environmental impact, including reducing the project size to 153 acres, increasing setbacks from sensitive lands, and altering wind corridors to protect viewsheds. Below is a map showing the before (left) and after (right) project footprint:



The Final Plan of Development includes 18 environmental compliance plans with over 310 best management practices and mitigation measures for the project, including bird and bat conservation strategies.

## Benefits to Disadvantaged Communities

The project is not located in a Disadvantaged Community. CPA defines a Disadvantaged Community as a community in California designated by CalEPA using the CalEnviroScreen tool as scoring at or above the 75<sup>th</sup> percentile. The closest large population center to the project is the Las Vegas metro area.

## Project Location

This project is located out-of-state.



**DEVELOPER**

The project developer is NextEra Energy, one of the largest electric power and energy infrastructure companies in North America. In June 2019, the Board approved a PPA with NextEra for its 233 MW Arlington Solar PPA. NextEra Energy has two principal businesses, Florida Power & Light Company, the largest electric utility in the state of Florida, and NextEra Energy Resources, the world's largest generator of renewable energy. NextEra operates 10 wind, 15 solar, and 26 energy storage facilities in California. NextEra has a tangible net worth of over \$28 billion and a Standard & Poor's credit rating of A-. The ability to execute a second long-term PPA with a developer of this caliber is a significant vote of confidence in CPA.

**Attachment:** 1) Mohave Wind Power Purchase Agreement<sup>4</sup>

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<sup>4</sup> Note that consistent with industry practice and prior contacts approved by the CPA Board, portions of the PPA have been redacted to protect market sensitive information.

**CONFIDENTIAL****EXECUTION VERSION****POWER PURCHASE AND SALE AGREEMENT****COVER SHEET****Seller:** Mohave County Wind Farm, LLC**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority**Description of Facility:** A wind powered electric generating facility with a nameplate capacity of approximately 300 MW commonly known as the White Hills Wind Energy Center located near the City of Kingman within unincorporated Mohave County, Arizona, as further described in Exhibit A.**Guaranteed Commercial Operation Date** has the meaning set forth in Exhibit B.**Milestones:**

<b>Identify Milestone</b>	<b>Date for Completion</b>
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA [X], Cat Ex [ ], Neg Dec [ ], Mitigated Neg Dec [ ], EIR [X], EIS/BLM ROW [X]	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Financial Close	██████████
Expected Construction Start Date	██████████
Initial Synchronization	November 1, 2020
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	November 1, 2020
Expected Commercial Operation Date	December 31, 2020

**Delivery Term:** Twenty (20) Contract Years, as further defined in Section 1.1.**Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1 – 20	830,095

**Guaranteed Capacity:** 300 MW**Contract Price:** \$██████████ (flat) with no escalation

**Product:**

- ☒ Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - ☒ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☒ Capacity Attributes
  - ☐ Full Capacity Deliverability Status

**Scheduling Coordinator:** Seller, on behalf of Buyer

**Development Security:** \$60/kW of Guaranteed Capacity for as-available

**Performance Security:** \$60/kW of Installed Capacity for as-available

**Guarantor:** NextEra Energy Capital Holdings, Inc.

**Notice Addresses:**

**Seller:**

Mohave County Wind Farm, LLC  
c/o Vice President, Business Management  
700 Universe Blvd  
Juno Beach, FL 33408

With a copy to:  
NextEra Energy Resources, LLC  
c/o General Counsel  
700 Universe Blvd  
Juno Beach, FL 33408

**Buyer:**

Clean Power Alliance of Southern California  
555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor  
Los Angeles, CA 90013  
Attention: Director of Procurement  
E-mail: [procurement@cleanpoweralliance.org](mailto:procurement@cleanpoweralliance.org)

With a copy to (which shall not be required for Notice purposes):

Clean Power Alliance of Southern California  
555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor

Los Angeles, CA 90013  
Attention: General Counsel  
E-mail: [nwhang@cleanpoweralliance.org](mailto:nwhang@cleanpoweralliance.org)

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## POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of October 3, 2019 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;  
and

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

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

### ARTICLE 1 DEFINITIONS

#### 1.1 **Contract Definitions.**

The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13(c).

██  
██  
██

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

██  
██

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

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment

plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

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

**“Availability Incentive Payments”** has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Buyer Default”** means an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 18.2.

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered to the Delivery Point.

**“CAISO Costs”** means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

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

**“CAISO Operating Order”** means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

**“CAISO Revenues”** means the credits and other payments incurred or received by Seller, on behalf of Buyer, as the Facility’s Scheduling Coordinator, as a result of Scheduling or Facility Energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

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

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

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

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

**“CEC Precertification”** means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

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

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

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

**“Commercial Operation Delay Damages”** means an amount equal to one thousand dollars (\$1,000) per day for each MW of Delayed Capacity.

**“Compliance Actions”** has the meaning set forth in Section 3.13(a).

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

**“Confidential Information”** has the meaning set forth in Section 18.1.

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

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

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

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

**“Contract Year”** means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

**“Cover Sheet”** means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

\_\_\_\_\_

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

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

**“Curtailed Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the result of the equation provided by Seller to reasonably calculate the potential generation of the Facility as a function of Available Capacity, weather and other pertinent data for the period of time during the Curtailment Period less the amount of Facility Energy during the Curtailment Period; provided that, if the Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

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

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

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

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator;

provided, however, that any instruction to curtail or reduce deliveries or output associated with Energy, Scheduled Energy or Facility Energy issued by Buyer is not a "Curtailment Order".

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**"Customer Market Results Interface"** has the meaning set forth in the CAISO Tariff.

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

**"Damage Payment"** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount equal to the Development Security amount required hereunder.

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

**"Deemed Delivered Energy"** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period or Buyer Curtailment Period, which amount shall be equal to the EIRP Forecast, expressed in MWh, applicable to the Market Curtailment Period or Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Market Curtailment Period or Buyer Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Market Curtailment Period or Buyer Curtailment Period; provided that, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0); provided further, if, in any Contract Year, the sum of Facility Energy and Deemed Delivered Energy exceeds one hundred twenty percent (120%) of Expected Energy, any curtailment of Energy from the Facility above such threshold shall not be considered "Deemed Delivered Energy".

**"Deemed PTC Loss"** shall mean the applicable PTC Rate multiplied by each MWh of Deemed Delivered Energy.

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

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

**"Delay Damages"** means Daily Delay Damages and Commercial Operation Delay Damages.

**“Delayed Capacity”** means the positive difference between (a) the Guaranteed Capacity, as applicable, and (b) the current Installed Capacity.

**“Delivery Point”** has the meaning set forth in Exhibit A.

**“Delivery Term”** shall commence on the Commercial Operation Date and continue through the period of Contract Years set forth on the Cover Sheet following the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

**“Development Security”** means (a) cash, or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Disclosing Party”** has the meaning set forth in Section 18.2.

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

**“Dynamic Scheduling Agreement”** means any agreement between Seller and the CAISO, Transmission Provider or any other Governmental Authority necessary to enable Seller to deliver Facility Energy to the Delivery Point as Dynamic Schedules.

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

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

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

**“EIRP Forecast”** means (a) the current CAISO forecast for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time, or, if applicable (b) an alternative forecast adopted by the Parties pursuant to Section 4.3.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point.

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

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

**“Energy”** means electrical energy generated by the Facility.

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

**“Exercise Period”** has the meaning set forth in Section 10.5(b).

**“Expected Construction Start Date”** has the meaning set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

**“Expected Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

**“Facility”** means the approximately 300 MW wind energy generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

**“Facility Energy”** means the lesser of (i) Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use, and (ii) the amount of Energy the CAISO settles on for any Settlement Interval or Settlement Period with respect to the Dynamic Schedule for the Facility.

**“Facility Meter”** means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

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

**“Fifteen Minute Market” or “FMM”** has the meaning set forth in the CAISO Tariff.

**“Financial Close”** means Seller (or one of its Affiliates on Seller’s behalf) has obtained approval from its operating committee to commit capital for the construction of the Facility and Seller has delivered to Buyer documentation reasonably satisfactory to Buyer evidencing the foregoing.

**“Fitch”** means Fitch Ratings Ltd., or its successor.

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

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

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



**“Future Environmental Attributes”** shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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

**“Guaranteed Capacity”** means the generating capacity of the Facility, as measured in MW at the Delivery Point, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

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

**“Guaranteed Construction Start Date”** means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

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

**“Guarantor”** means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

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

**“Imbalance Energy”** means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

**“Indemnified Party”** has the meaning set forth in Section 16.1(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the initial delivery of Facility Energy to the Delivery Point.

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

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

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

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“kW”** means kilowatts in alternating current, unless expressly stated in terms of direct current.

**“kWh”** means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having assets of at least ten billion dollars (\$10,000,000,000) and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

**“Licensed Professional Engineer”** means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer.

**“LMP Strike Price”** means zero dollars per MWh (\$0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Section 4.3(b).

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

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.7(b).

“**Market Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is an LMP at the Settlement Point that is equal to or below the LMP Strike Price.

“**Material Terms**” has the meaning set forth in Section 10.5(a).

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

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

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

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

“**Offer Notice**” has the meaning set forth in Section 10.5(a).

“**OMS**” has the meaning set forth in Section 4.4(d).

“**Party**” has the meaning set forth in the Preamble.

**“Pass-Through Amounts”** has the meaning set forth in Section 3.3(e).

**“Performance Measurement Period”** means each consecutive two (2) full Contract Year periods beginning on the Commercial Operation Date.

**“Performance Security”** means (a) cash, (b) a Letter of Credit, or (c) a Guaranty, in the amount set forth on the Cover Sheet.

**“Permitted Transferee”** means (i) any Affiliate of Seller solely in connection with the financing of the facility or in connection with a corporate reorganization, or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third party with such experience to operate the Facility.

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

**“Planned Outage”** means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

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

**“Portfolio”** means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Product”** means (a) Energy generated by the Facility, (b) Green Attributes, and (c) Capacity Attributes, as applicable.

**“Production Tax Credits”** or **“PTCs”** means the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Internal Revenue Code (as amended from time to time), or such substantially equivalent federal tax benefit that provides Seller with a tax credit based on energy production from any portion of the Facility.

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

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC Rate”** shall mean the current amount of the Production Tax Credit (on a per MWh basis) as set forth in applicable Internal Revenue Service guidance, on an After-Tax Basis.

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

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

**“RA Shortfall”** has the meaning set forth in Section 3.9.

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.9(b), any month in a calendar year during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month, provided that Buyer would have been able to realize the Resource Adequacy Benefits but for Seller’s failure to make such portion of the Net Qualifying Capacity available to Buyer.

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

**“Receiving Party”** has the meaning set forth in Section 18.2.

**“Reliability Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“Remedial Action Plan”** has the meaning in Section 2.5.

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

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

**“Replacement Energy”** has the meaning set forth in Exhibit G.

**“Replacement Product”** has the meaning set forth in Exhibit G.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer and located within SP-15 TAC Area.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or

decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

**“ROFR Offer”** has the meaning set forth in Section 10.5(a).

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

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

**“Scheduled Energy”** means the Facility Energy scheduled by Seller, on behalf of Buyer, that clears under the applicable CAISO market based on the final Day-Ahead Schedule (as defined in the CAISO Tariff), FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

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

**“Seller’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

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

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

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

**“Settlement Point”** means PNode.

**“Shared Facilities”** means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.



“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer, provided that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

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

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP-15 as set forth in the CAISO Tariff.

“**Station Use**” means:

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

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

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means PTCs and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

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

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

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO from the Facility and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to parallel for the Facility and (b) ending upon the occurrence of the Commercial Operation Date.

**“Third Party Offer”** has the meaning set forth in Section 10.5(a).

**“Third Party Transaction”** has the meaning set forth in Section 10.4.

**“Transmission Provider”** means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy to or from the Delivery Point.

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

**“Transmission System Outage”** means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

**“Ultimate Parent”** means NextEra Energy, Inc., a Delaware corporation.

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

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

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

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

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

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

## **1.2 Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”); provided, however, that subject to Buyer’s obligations in Section 3.7, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2 for the Facility.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

**2.2 Conditions Precedent to Commercial Operation and Commencement of the Delivery Term.** Commercial Operation shall not be achieved and the Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

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

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

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

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

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

WREGIS system, and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

(g) Seller has delivered the Performance Security for the Installed Capacity of the Facility to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 **Reserved.**

2.4 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.5 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of a Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

### ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that

such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Subject to Buyer's obligation to purchase Capacity Attributes in accordance with this Section 3.1, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, Curtailment Order, or during a Market Curtailment Period.

3.2 **Sale of Green Attributes.** Subject to Section 3.3(b), during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Compensation.**

(a) During the Delivery Term, Buyer shall pay Seller the following amounts for each MWh of Facility Energy and Deemed Delivered Energy during a Contract Year, up to one hundred twenty percent (120%) of the amount of the Expected Energy for the applicable Contract Year:

(i) For each Settlement Interval, the positive difference of (A) the product of the Contract Price and the aggregate MWh of Facility Energy in such Settlement Interval, minus (B) the excess of any CAISO Revenues over CAISO Costs associated with such Settlement Interval; and

(ii) For each MWh of Deemed Delivered Energy in each Settlement Interval, the positive difference of (A) the Contract Price plus the Deemed PTC Loss associated with such Deemed Delivered Energy, minus (B) the excess of any CAISO Revenues over CAISO Costs associated with such Settlement Interval; provided, however, if the Facility Energy for any Contract Year exceeds one hundred twenty percent (120%) of the applicable Expected Energy for such Contract Year, then Seller will refund to Buyer any amounts previously paid by Buyer respecting the Contract Price and Deemed PTC Loss for Deemed Delivered Energy in such Contract Year (which refund Seller shall pay to Buyer on or before the last day of the calendar month following the last month of the Contract Years).

(b) During the Delivery Term, Buyer shall not be obligated to purchase or pay Seller for any Energy generated by the Facility during a Contract Year, as applicable, in excess of one hundred twenty (120%) of the Expected Energy for the applicable Contract Year, and, in such event, (i) [REDACTED]

[REDACTED]

(c) During the Delivery Term, Seller shall receive no compensation from Buyer for Curtailed Energy or Facility Energy that is delivered in violation of a Curtailment Order.

(d) With respect to any calendar month during the Delivery Term that the difference of (i) the product of the Contract Price and the aggregate MWh of Facility Energy for all Settlement Intervals in such calendar month, minus (ii) the excess of any CAISO Revenues over CAISO Costs associated with such calendar month is negative, no amounts respecting Facility

Energy shall be due from Buyer and Seller shall pay the amount of such difference to Buyer on or before the last day of the calendar month following the month in which such negative difference occurs.

(e) With respect to each calendar month during the Delivery Term, Seller will invoice Buyer for Pass-Through Amounts associated with such calendar month. **“Pass-Through Amounts”** shall equal costs or charges incurred by or imposed by the CAISO on Seller or the Facility during the applicable month for all forecasting fees and related charges associated with the Facility’s participation in the CAISO market and in EIRP; *provided, however*, that Pass-Through Amounts shall not include penalties or charges assessed to the Facility or Seller attributable to Seller’s failure to comply with the CAISO Tariff or Prudent Operating Practice.

(f) With respect to each calendar month during the Delivery Term, Seller will invoice Buyer an amount equal to [REDACTED] as payment for Seller, or an Affiliate of Seller, performing the duties of Scheduling Coordinator on Buyer’s behalf hereunder.

3.4 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver the Scheduled Energy. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy. So long as Seller is in compliance with its forecasting obligations under EIRP (if available), Buyer shall be responsible for all CAISO costs, and shall be entitled to all CAISO revenues associated with Imbalance Energy.

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

### 3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Sections 3.3(b), 3.6(b) and 3.13, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change

in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

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

3.7 **Test Energy.** No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy and provide a forecast in accordance with Section 4.4(b). If and to the extent the Facility generates Test Energy, Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product during any Settlement Interval, Buyer shall pay Seller an amount equal to the positive difference of (A) the product of seventy percent (70%) of the Contract Price and the aggregate MWh of Test Energy in such Settlement Interval, minus (B) the excess of any CAISO Revenues over CAISO Costs associated with such Settlement Interval. With respect to any calendar month during which Test Energy is generated that the difference of (i) the product of seventy percent (70%) of the Contract Price and the aggregate MWh of Test Energy for all Settlement Intervals in such calendar month, minus (ii) the excess of any CAISO Revenues over CAISO Costs associated with such calendar month is negative, no amounts respecting Test Energy shall be due from Buyer, and Seller shall pay the amount of such difference to Buyer on or before the last day of the calendar month following the month in which such negative difference occurs. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8 **Capacity Attributes.**

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility, as available.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall use commercially reasonable efforts and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer and to effectuate the use by Buyer of any applicable Resource Adequacy Benefits from the Facility, subject to Buyer being able to realize the Resource Adequacy Benefits (including by obtaining import allocation rights pursuant to Section 40.6.4.2 of the CAISO Tariff, or its successor, or reselling the Resource Adequacy Benefits to a third party that obtains or otherwise has import allocation rights.) Throughout the Delivery Term, and subject to Section 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits, as available, to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration



and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

### 3.9 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** If Buyer is unable to realize the Resource Adequacy Benefits solely due to the action or inaction of Seller, such an event will constitute an “**RA Shortfall**”. Notwithstanding Seller’s obligations set forth in Section 4.3 or anything to the contrary herein, for each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as set forth in Section 3.9(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the lesser of (A) the actual price paid by Buyer to replace such shortfall, and (B) the price for CPM Capacity as listed in Section 43.7.1 of the CAISO Tariff (or its successor); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amount, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, *provided* that the amount of Replacement RA shall not, in any given twelve- (12) month period, exceed ten (10%) of the aggregate amount of Qualifying Capacity for such twelve- (12) month period, and provided that any Replacement RA is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable CPUC operating month for the purpose of monthly Resource Adequacy Benefits reporting.

3.10 **CEC Certification and Verification.** Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification for the Facility by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification for the Facility. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification for the Facility. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default

if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

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

3.13 **Compliance Expenditure Cap**. If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at twenty-five thousand dollars (\$25,000) per MW of Guaranteed Capacity (“**Compliance Expenditure Cap**”).

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

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

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

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

3.14 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in

connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Seller (or an Affiliate of Seller), on Buyer's behalf. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Facility Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Facility Energy through Dynamic Schedules and shall be responsible for securing such arrangements with CAISO and any other Transmission Provider as are necessary in connection therewith.

(b) Green Attributes. All Green Attributes associated with Test Energy and the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

### **4.2 Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

### **4.3 Scheduling Coordinator Responsibilities.**

(a) Seller to be Scheduling Coordinator. Buyer hereby designates Seller and Seller hereby accepts designation by Buyer to act as Scheduling Coordinator on behalf of Buyer (or Seller may designate a qualified third party to provide Scheduling Coordinator services on behalf of Buyer) with the CAISO to Schedule and deliver the Product to the Delivery Point; *provided*, Buyer shall have the right, upon sixty (60) days' notice to Seller, to designate a different

party (including Buyer) to be the Scheduling Coordinator for the Facility in the event of Seller's material non-performance of its obligations under this Section 4.3, and the Parties shall cooperate in good faith to modify the Agreement provisions affected by such change. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) CAISO Market Participation. During the Delivery Term, Seller, on behalf of Buyer, as the party responsible for all Scheduling Coordinator activities with respect to the Facility, shall submit bids into the Day-Ahead Market and the Real-Time Market with the EIRP Forecast. Subject to Section 3.3(b), Seller's bids into the Day-Ahead Market and the Real-Time Market shall be consistent with the EIRP Forecast at the LMP Strike Price consistent with Prudent Operating Practice. Subject to Section 3.3(b), Buyer may change the LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new LMP Strike Price and the effective date for the new LMP Strike Price.

(c) EIRP Forecast. If either Party determines that an alternative forecast is more accurate than the EIRP Forecast, based upon no less than six months of recorded data comparing the alternative forecast, the EIRP Forecast, and the actual Facility Energy data, then, subject to the other Party's written consent, such alternative forecast may be used in place of the EIRP forecast. Any such successor alternative forecast will itself be subject to periodic review by the Parties under the foregoing criteria. If the Parties are not able to agree upon a commercially reasonable replacement forecast, either Party may submit the matter to Dispute Resolution in accordance with Article 16 of this Agreement. Notwithstanding the foregoing, any successor alternative forecast will be used for determining Deemed Delivered Energy on a prospective basis only.

(d) CAISO Costs and CAISO Revenues. Subject to Section 3.3, Buyer shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues; provided, that, any net costs or charges assessed by the CAISO which are due to a Seller Default shall be Seller's responsibility. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity, subject to Section 3.8, are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the responsibility of the decision-making Party responsible for the action leading to such sanction or penalty.

(e) Future Changes to Scheduling Protocols. During the Delivery Term, the Parties agree to discuss in good faith requested changes by either Party to the CAISO scheduling procedures set forth in this Agreement, including the possibility of incorporating Inter-SC Trades in the Day-Ahead Market.

4.4 **Forecasting.** Seller shall provide the Facility Energy forecasts described below. Seller's Facility Energy forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Facility Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Facility Energy.** No less than forty-five (45) days before the beginning of each calendar year for every Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Facility Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Facility Energy.** No less than thirty (30) days before the first day on which Test Energy is expected to be available from the Facility, and thereafter ten (10) Business Days before the beginning of each month up to and during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Facility Energy for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Day-Ahead Forecast.** By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the Expected Energy from the Facility for relevant periods) ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Expected Energy for relevant periods. Seller shall provide each Day-Ahead Forecast through Seller's (or its SC's) Customer Market Results Interface for the Facility. If the Customer Market Results Interface is not available, Seller shall provide the Day-Ahead Forecast in the form of a CSV file delivered to Buyer's File Transfer Protocol (FTP) site designated by Buyer from time-to-time.

(d) **Real-Time Forecast Updates.** Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System ("**OMS**") based on CAISO protocols, and (ii) with respect to hourly expected Energy quantities, via the Facility's EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer and, in the case of Energy forecasts, a forecast vendor approved by Buyer (such approval not to be unreasonably withheld or delayed). Among other information provided through such procedures, Buyer shall be notified if, past the deadlines for Day-Ahead Forecasts provided in Section 4.4(c), there are change(s) in such Day-Ahead Forecasts of one (1) MW / (1) MWh or more, as applicable, in the Available Capacity or the hourly expected Energy, in any case whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause, including (as appropriate) information regarding the beginning date and time of any event resulting in the change in Available Capacity, the expected end date and time of any such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) **CAISO Tariff Requirements.** Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent

Resource Protocol that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data.

#### 4.5 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order or Buyer Curtailment Order.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall compensate Seller for Deemed Delivered Energy in accordance with Section 3.3.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Unless Seller is able to respond to Buyer Curtailment Orders or Curtailment Orders through its existing methodology, Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

(a) **Facility Maintenance.** Seller shall provide to Buyer written schedules for any Planned Outage for each Contract Year no later than thirty (30) days prior to the first day of

each Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days' notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

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

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

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Reserved.

(f) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

#### **4.7 Guaranteed Energy Production.**

(a) During the Delivery Term, Seller shall deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each Performance Measurement Period; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP-15 EZ Gen Hub within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during any such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year. Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the rates specified for Facility Energy.

(b) Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer Default or other failure to perform, and Curtailment Periods, Market Curtailment Periods, or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, as applicable, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (1) any Deemed Delivered Energy plus (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer Default or other failure to perform, Curtailment

Periods, Market Curtailment Period or Buyer Curtailment Periods (“**Lost Output**”) plus (3) the amount of undelivered Energy during such Performance Measurement Period, as applicable, with respect to which Seller has already paid liquidated damages in accordance with Exhibit G plus (4) the amount of Replacement Product in accordance with Exhibit G. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

(c) “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one hundred forty percent (140%) of the average annual Expected Energy for the Performance Measurement Period.

4.8 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (f) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

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



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

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by two (2) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8, and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

4.9 **Financial Statements.** If requested by Buyer, and not publicly available on Ultimate Parent’s website, Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Ultimate Parent: (i) a copy of Ultimate Parent’s annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Ultimate Parent’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall 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 Seller diligently pursues the preparation, certification and delivery of the statements.

## **ARTICLE 5 TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and

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

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

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (a) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (b) provide for separate metering of the Facility.

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter

requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than ten (10) days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, CAISO Revenues received and CAISO Costs incurred during such monthly billing period, and the Contract Price applicable to such Product, and the calculation of Deemed Delivered Energy, and the amount of Replacement Product or Replacement RA delivered during the monthly billing period; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice, and (b) thirty (30) days after the end of the prior monthly billing period. If such due date falls on a

weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon Seller's delivery of the Performance Security for Commercial Operation, Buyer shall return the Installed Capacity portion of the Development Security to Seller, less the amounts drawn in accordance with this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security for Commercial Operation, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the remaining Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security for the Installed Capacity for Commercial Operation to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit D. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting); [REDACTED]

[REDACTED] Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 **Buyer’s Financial Statements.** From the Effective Date, unless such financial statements are available on the internet at <https://www.cleanpoweralliance.org/>, if requested in writing by Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of the end of each quarter, and audited annual financial statements within one hundred eighty (180) days after the end of each fiscal year. Buyer’s financial statements shall have been prepared in accordance with GAAP, provided that Buyer’s quarterly budget-to-actual reports are not prepared in accordance with GAAP. 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 Buyer diligently pursues the preparation, certification and delivery of the statements.

8.11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the



reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

**10.2 No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

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

writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party; provided that, in the case of Seller as the Party electing to terminate this Agreement, for a period of two (2) years from the date of the termination of this Agreement, Seller shall not, and shall cause its Affiliates and any successors or assign to not, following such termination directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Facility Energy with any Person other than Buyer (a "**Third Party Transaction**") except in compliance with the terms and conditions of Section 10.5. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

10.5 **Right of First Refusal.**

(a) Following a termination by Seller under Section 10.4, if Seller receives a bona fide written offer for a Third Party Transaction that Seller desires to accept (each, a "**Third Party Offer**"), Seller shall immediately notify Buyer in writing (the "**Offer Notice**") of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third Party Transaction and the material financial and other terms and conditions of such Third Party Offer (the "**Material Terms**"). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third Party Offer (the "**ROFR Offer**").

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the Offer Notice (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third party offeror).

(c) If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 10.5, at any time following the expiration of the Exercise Period, Seller may consummate the Third Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third Party Transaction is not consummated, the terms and conditions of

this Section 10.5 will again apply and Seller shall not enter into any Third Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 10.5.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, except as each may be excused by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring

before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

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

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

**11.5 Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

**11.6 Limitation on Seller's Ability to Make or Agree to Third Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provides Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(a) Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

(b) Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

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

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

## **ARTICLE 12**

### **LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) A THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT,

NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.9, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.



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

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

(f) Seller possesses, or Ultimate Parent possesses on Seller's behalf, all requisite power, authority, solvency, and sufficient funds to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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

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

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts resulting in Buyer entering into this Agreement, Buyer is committed to creating community benefits, which include engaging a skilled and trained workforce and targeted hires in connection with the Facility. In connection therewith:

(a) Commencing on the Commercial Operation Date, and on December 1st of each of the next succeeding three (3) years, Seller shall cause two hundred and fifty thousand dollars (\$250,000) to be invested each year, for a total of one million dollars (\$1,000,000.00), for workforce development efforts in Los Angeles and Ventura Counties. The investment plan for utilizing such funds will be developed by Buyer and other interested stakeholders to be determined by Buyer. Seller shall cooperate with Buyer's implementation of the developed investment plan.

(b) Prior to the Guaranteed Construction Start Date, (i) Seller shall cause its balance of plant contractor to utilize, or cause its subcontractors to utilize, at least thirty (30) members of the International Brotherhood of Electrical Workers Union ("IBEW") in connection with all balance of plant Facility construction work deemed to be appropriately performed by an electrician from the wind turbine pads up to, but not including, the electrical substation(s), and (ii) Seller shall cause its balance of plant contractor to use its best efforts to conform to federal regulations, related to affirmative action in employment practices (specifically, the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7, of Executive Order 11246, as amended, applicable portions of Executive Orders 11701 and 11758, relative to Equal employment Opportunity, Section 503 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the Implementing Rules and Regulations of the Office of Federal Contract Compliance Programs ("Federal Requirements")). Seller shall cause its balance of plant contractor to use its best efforts to employ protected class members without discrimination based on their respective protected class status, ensure that recruitment, advertising and job application procedures are consistent with Federal Requirements, and engage in appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit protected class members. With respect to clause (b)(ii) above, specific targets for demographic sub-categories are not defined at this time but shall be substantially similar to the demographic sub-categories for the geographic area including the Site as specified by the US Department of Labor as of January 1, 2020.

(c) Reporting. Seller shall provide reporting on a quarterly basis on workforce development criteria, pursuant to Exhibit E. The workforce development criteria shall include (i) utilization of members of IBEW in connection with the construction of the Facility; (ii)

conformance by Seller's balance of plant contractor to Federal Requirements related to affirmative action in employment practices; (iii) Seller and its plant contractor's outreach and recruitment activities, and job application processes; and (iv) Seller's balance of plant contractor's goals and its conformance with the demographic sub-categories specified in clauses (A) through (D) in paragraph (b) above.

(d) Enforcement. If Seller fails to use its best efforts to comply with the requirements applicable to Seller in paragraph (b)(i), then Seller shall pay to Buyer an amount equal to five hundred thousand dollars (\$500,000.00) therefor. Furthermore, if Seller fails to comply with the requirements applicable to Seller in paragraph (b)(ii), then Seller shall pay to Buyer an amount equal to five hundred thousand dollars (\$500,000.00) therefor. Any such amounts payable by Seller shall be deposited and invested by Buyer pursuant and incremental to the amounts specified in paragraph (a) above. Each Party agrees and acknowledges that the damages Buyer would incur due to Seller's failure to comply with the requirements applicable to Seller in paragraph (b) would be difficult or impossible to determine, or obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore the Parties agree that the amounts specified in this paragraph (d) is an appropriate approximation of such damages. Seller's payment of the amounts provided for in this paragraph (d) shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to comply with paragraph (b) above.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit L ("Collateral Assignment Agreement").

14.3 **Permitted Assignment by Seller.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (1) an Affiliate of Seller, or (2) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

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

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(b) Notwithstanding anything to the contrary in Sections 14.1 and 14.3(a), Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to (1) NextEra Energy Operating Partners, LP or (2) NextEra Energy Partners, LP; if, and only if:

(i) (x) A wholly-owned indirect subsidiary of Ultimate Parent or NextEra Energy Resources, LLC or a Permitted Transferee under clause (ii) of the definition continues to operate the Facility and (y) there is no material adverse effect on the ability of Seller's Guarantor to perform under the Performance Security;

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

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to transfer or assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

## **ARTICLE 15 DISPUTE RESOLUTION**

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

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

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

## **ARTICLE 16 INDEMNIFICATION**

### **16.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided,

however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 17 INSURANCE**

### **17.1 Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of ten million dollars (\$10,000,000) per occurrence, and an annual aggregate of not less than ten million dollars (\$10,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella or excess insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

(e) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employer's liability coverage in accordance with applicable requirements of Law; and (iii) business auto liability insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

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

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella or excess liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully



in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

**18.2 Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

**18.3 Irreparable Injury; Remedies.** Except as provided in Section 18.2, Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach

by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

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

## **ARTICLE 19 MISCELLANEOUS**

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or

any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

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

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

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

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

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

19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement

constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, including any change that allocates energy import rights to Seller instead of Buyer, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

*[Signatures on following page.]*

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

**Mohave County Wind Farm, LLC, a Delaware limited liability company**      **CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority**

By: \_\_\_\_\_  
Name: Michael O’Sullivan  
Title: Vice President

By: \_\_\_\_\_  
Name: Ted Bardacke  
Title: Executive Director

## **EXHIBIT A**

### **DESCRIPTION OF THE FACILITY**

**Site Name:** White Hills Wind Energy Center

**Site includes all or some of the following APNs:** 342-03-002, 342-01-006, 337-10-143, 342-05-056, 342-08-001

**County:** Mohave County, AZ

**Guaranteed Capacity:** 300 MW

**Delivery Point:** CAISO PNode scheduling point at Mead 230kV

**Settlement Point:** PNode

**PNode:** To be established prior to the Commercial Operation Date at the Mead 230kV bus. Seller shall promptly notify Buyer following the establishment of the PNode.

**Transmission Provider:** Western Area Power Administration (WAPA)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all primary contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; provided that in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Facility, as described in Exhibit B, Section 2.

#### 2. Commercial Operation of the Facility.

- a. **Reserved.**
- b. **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement with respect to the Guaranteed Capacity and provided Notice to Buyer substantially in the form of **Exhibit H** (the **“COD Certificate”**). The **“Commercial Operation Date”** shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.
  - i. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period, the **“Guaranteed Commercial Operation Date”**). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
  - ii. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Commercial Operation Delay Damages paid by Seller for Commercial Operation shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
  - iii. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for the first sixty (60) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.
- 3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the portion of Capacity that has not achieved Commercial Operation, and the other applicable provisions of this Agreement shall be adjusted accordingly.
- 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation



requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- b. a Force Majeure Event occurs; or
- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, as applicable, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date, as applicable.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than the Guaranteed Capacity minus 2 MW, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is greater than or equal to the Guaranteed Capacity minus 2 MW (provided that such additional Installed Capacity may exceed the Guaranteed Capacity by up to 2 MW), as applicable, and Seller shall provide to Buyer a new certificate substantially in the form attached as **Exhibit I** hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity minus 2 MW by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

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

## **EXHIBIT C**

### **CONTRACT PRICE**

The Contract Price of the Product shall be: [REDACTED] (flat) with no escalation

## EXHIBIT D

### FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“Guarantor”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and Mohave County Wind Farm, LLC, a Delaware limited liability company (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_\_] 2019.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

**1. Guaranty.** For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed [\_\_\_\_\_] (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and

conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its

obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment restitution or reimbursement.

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

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

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

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

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

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance

with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor's parent, NextEra Energy Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, materially adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

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

If delivered to Buyer, to it at   
Attn:

If delivered to Guarantor, to it at   
Attn:

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be

unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

#### **10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

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

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

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL



PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

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

*[Signature on next page]*

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

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS,  
INC.

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

BUYER:

CLEAN POWER ALLIANCE OF SOUTHERN  
CALIFORNIA

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

## **EXHIBIT E**

### **PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

## EXHIBIT F

### AVERAGE EXPECTED ENERGY

Average Expected Energy, MWh Per Hour

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Jan	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, as applicable, each in MWh;

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

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

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

#### **Additional Definitions:**

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

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

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period, as applicable, for which the Replacement Green Attributes are being provided.

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

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

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the testing, and such peak electrical output, as adjusted, was [*peak output in MW*].

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on\_\_\_\_[DATE]\_\_\_\_\_

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By:\_\_\_\_\_

Its:\_\_\_\_\_

Date:\_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATES

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The performance test for the Facility demonstrated peak electrical output of \_\_ MW at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT J**  
**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("**Certification**") of the Construction Start Date is delivered by [Seller Entity] ("**Seller**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the "**Construction Start Date**");  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously \_\_\_\_\_ identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor  
Los Angeles, CA 90013

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of **[name of NextEra project company]**, 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Request.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

## EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized officer of [ ], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (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 Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] 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 [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

## EXHIBIT L

### FORM OF COLLATERAL ASSIGNMENT AGREEMENT

#### FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) Mohave County Wind Farm, LLC, a Delaware limited liability company (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Power Purchase and Sale Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, CPA is authorized to act in accordance with Collateral Agent's instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide

PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided, that*, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company's cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; *provided, further*, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies CPA (such notice, a "Financing Document Default Notice") that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the PPA (a "Permitted Transferee"). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA



is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Facility is transferred; *provided*, the proposed transferee shall have demonstrated to CPA's reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the PPA, including curing defaults, posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii)

take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any

material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions. *[Collateral Agent may specific account information]*

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members . CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding

obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

#### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

### SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

#### 4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

#### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

#### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. MISCELLANEOUS

#### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with *[Notice Section of the PPA]* of the PPA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[ ]*, Fax: *[ ]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

## 6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

## 6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

## 6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*



IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

MOHAVE COUNTY WIND FARM,  
LLC,  
a Delaware limited liability company.

CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA,  
a California joint powers authority.

By:\_\_\_\_\_

*[Name]*

*[Title]*

Date:\_\_\_\_\_

By:\_\_\_\_\_

*[Name]*

*[Title]*

Date:\_\_\_\_\_

*[NAME OF COLLATERAL AGENT],*  
*[Legal Status of Collateral Agent].*

By:\_\_\_\_\_

*[Name]*

*[Title]*

Date:\_\_\_\_\_

## **SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to [ ] (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.9 of the Agreement, Seller hereby provides the below Replacement RA product information:

#### **Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT N

### NOTICES

<b>MOHAVE COUNTY WIND FARM, LLC, a Delaware limited liability company (“Seller”)</b>	<b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</b>
<b>All Notices:</b> Street: 700 Universe Blvd City: Juno Beach, FL 33408 Attn: Business Management  Phone: (561) 691-2866 Facsimile: (561) 304-5161 Email: emre.ergas@nee.com	<b>All Notices:</b>  Street: 500 W. 5th Street, 35th Floor City: Los Angeles, CA 90013 Attn: Executive Director  Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org
<b>Reference Numbers:</b> [REDACTED] [REDACTED] [REDACTED]	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Invoices:</b> Attn: Business Management [REDACTED] [REDACTED] [REDACTED]	<b>Invoices:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org
<b>Scheduling: NextEra Energy Marketing, LLC</b> Attn: Trading Manager [REDACTED] [REDACTED] [REDACTED]	<b>Scheduling:</b> Attn: Jeff Fuller, Director Client Services Phone: (425) 460-1110 Email: jfuller@teainc.org
<b>Confirmations:</b> Attn: N/A Phone: N/A Facsimile: N/A Email: N/A	<b>Confirmations:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org
<b>Payments:</b> Attn: Business Management Phone: (561) 691-2866 Facsimile: (561) 304-5161 Email: emre.ergas@nee.com	<b>Payments:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org
<b>Wire Transfer:</b> Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date. BNK: [TBD] ABA: [TBD] ACCT: [TBD]	<b>Wire Transfer:</b> [REDACTED] [REDACTED] [REDACTED]

<b>MOHAVE COUNTY WIND FARM, LLC, a Delaware limited liability company ("Seller")</b>	<b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer")</b>
<b>Emergency Contact:</b> Attn: Renewable Operations Control Center (ROCC) (24-hour coverage): [REDACTED] [REDACTED] [REDACTED]	<b>Emergency Contact:</b> Attn: Director, Power Planning & Procurement Phone: (213) 713-1101 E-mail:nkeefers@cleanpoweralliance.org

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## Item V

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Ted Bardacke, Executive Director  
**Subject:** Management Update  
**Date:** October 3, 2019

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### **Integrated Resource Planning Procurement Proposed Decision**

On September 12, 2019, the California Public Utilities Commission (CPUC) issued a proposed decision (PD) in the Integrated Resource Planning proceeding. The PD states that due to the impending retirement of four once-through cooling (OTC) power plants in Southern California at the end of 2020, the California electric grid will be short 2,500 megawatts needed for statewide electricity system reliability starting in 2021. Using its own hour-by-hour forecasting of electricity system operations, the California Independent System Operator (CAISO) supports the contention of a possible capacity shortfall during the evening peak periods of electricity demand.

To address the possible shortfall, the PD directs two main actions. First, it directs the CPUC to recommend that the State Water Resources Control Board extend OTC compliance deadlines for up to three years for 2,500 to 3,700 megawatts of capacity to allow time for new resources to come online. Although not explicitly stated, by recommending at least 2,500 megawatts of OTC extensions, Ormond Beach and Redondo Beach generating facilities would likely be included in any OTC extensions recommended by the PD. Both Ormond Beach and Redondo Beach are located within CPA's service territory and have been subject to long-standing campaigns for closure and community planning efforts for site remediation and reuse.

Second, the PD orders all load serving entities (LSE) in the Southern California Edison (SCE) service area to procure incremental capacity totaling 2,500 megawatts to serve as a replacement for the OTC units. The ordered procurement by LSE is as follows:

<b>Load Serving Entity</b>	<b>Minimum By August 1, 2021 (MW)</b>	<b>Minimum By August 1, 2022 (MW)</b>	<b>Minimum By August 1, 2023 (MW)</b>
SCE (Bundled)	1,047	1,396	1,745
SCE Direct Access (Aggregated)	213	284	355
Apple Valley Choice Energy	4	6	7
Clean Power Alliance of Southern California	214	286	357
Lancaster Clean Energy	10	14	17
Pico Rivera Innovative Municipal Energy	3	4	5
Rancho Mirage Energy Authority	5	7	9
San Jacinto Power	3	4	5
<b>Total</b>	<b>1,499</b>	<b>2,001</b>	<b>2,500</b>

Notably, only LSEs in SCE territory are directed to procure, although the PD identifies the reliability need as a statewide issue. The decision also lays out requirements for progress reporting toward the procurement targets, as well as requirements for determining eligibility of incremental procurement.

The CPUC could take up this PD as early as October 24 and CPA will file comments the first week of October. CPA's is that: a) the need for OTC units is overstated; and b) that if the purported problem is statewide then all LSEs statewide should contribute to a solution, not just Southern California LSEs and, by extension, just Southern California ratepayers.

Regardless of the outcome of the CPUC PD, CPA does believe that it will be directed to do some amount of new procurement for Resource Adequacy capacity above and beyond what is currently planned for the next three years. This direction is an opportunity to quickly replace fossil fuel resources with GHG-free resources. CPA is currently evaluating the process it will use to solicit these resources and what type of GHG-free resources should be targeted.



CPA is coordinating a coalition letter (attached) opposing the extension of the OTC deadlines at Ormond Beach and Redondo Beach. Any member that wishes to support that position and sign on to the coalition letter please email Gina Goodhill, Policy Director, at [ggoodhill@cleanpoweralliance.org](mailto:ggoodhill@cleanpoweralliance.org).

### **Billing System Update**

As of late September, the number of bills issued with SCE charges but without CPA charges was below 2,000, down from a high of 110,000 in June. There are still approximately 13,000 discrete account billing cycles where SCE did not report usage to CPA resulting in some customers not receiving bills at all for one or more billing cycles.

CPA and data manager Calpine continue to closely monitor for any anomalous billing issues with SCE, which continues to be a high-risk customer service and financial issue for CPA.

### **Financial Performance**

As reported last month, CPA's financial performance over the summer has been at the low end of expectations due largely to lower than normal temperatures and calm energy markets, which reduced energy prices. The reduced temperatures caused the maximum peak load on the electricity system this summer to be lowest it has been since 2003. In July, the first month of the fiscal year, revenues were 8% lower than budget revenue forecasts and energy costs were 3% below budgeted energy costs. Despite this, CPA earned \$3.3 million in July and has sufficient cash on hand to support operations.

CPA's annual independently audited financial statements for Fiscal Year 2019/2020 will be presented to the Finance Committee in October and then be published on the CPA website and distributed to financial and energy counterparties.

### **Opt-Actions**

As of September 24, CPA's commercial (Phases 1, 2, and 4) opt-out rate is 5.42%. CPA's commercial customer has stabilized in the Lean and Clean jurisdictions but commercial

customers in the 100% Green default jurisdictions continue to opt-out in higher numbers than any other customer type. The opt-out rate for new commercial customers who have started accounts since CPA's initial enrollment is 1.66%.

CPA's Residential (Phase 3) opt-out rate is 5.05% and has essentially reached steady state. Opt-out rates among new residential move-ins is significantly lower at 1.63%. A summary of opt-action data by jurisdiction is attached.

Total opt-out by load is estimated to be 13.7% reflecting higher opt-out rates among large commercial customers. CPA recently received notice that it would lose less than 1% of its load in January of 2021 as result of the lifting of the Direct Access cap. This loss is significantly lower than expected.

### **Customer Service Center Performance**

Call center volume in September decreased to 5,098 incoming calls as of September 23, compared to higher volumes in July and August (14,246 and 10,739 incoming calls respectively), which were due to customers enquiring about SCE billing system challenges. To date, over 98% of calls in September were answered within 60 seconds, and average wait time was 17 seconds. CPA has continued to operate its call center for extended hours in order to handle the increased volume of customer billing issue inquiries but may consider scaling back to normal hours in the coming weeks.

### **Customer Communications**

In late September CPA, mailed its final 2018 Power Content Label (PCL), approved by the California Energy Commission, to all customers who took service from CPA during 2018 (Phase 1 & 2) customers to inform these customers about the source of their energy.

On a monthly basis, CPA sends a letter to all customers who opt up to 100% Green Power or who start new service in a 100% Green Power default community. The letters acknowledge these residents and businesses for their sustainability commitment and also notify customers that CPA's 100% Green Power product is Green-e® certified, meaning

it meets the environmental and consumer-protection standards set forth by the nonprofit Center for Resource Solutions.

With the launch of CPA's Green Leader program earlier this year, CPA staff have been actively communicating with commercial customers in our service territory encouraging those customers already at 100% Green Power to become Green Leaders, as well as working with customers interested in opting up to get credit for their environmental leadership and renewable energy achievements by signing up as a Green Leader. The Green Leader program flyer is attached for reference.

Staff continues to represent CPA throughout the region at various community and energy industry events, speak to customer groups to educate residents and businesses about their energy options and billing questions, and engage with the media. In an effort to continue connecting with our members, stakeholders, and customers, CPA plans to expand its communications, and will launch an electronic newsletter in the coming weeks.

#### **Contracts Executed in September Under Executive Director Authority**

The Climate Registry was contracted to provide greenhouse gas (GHG) emissions reporting services for CPA. The contract is for an NTE amount of \$4,000.

Harmon Press was contracted to provide high quality printed flyers, brochures, customer notices, posters, banners, agency letterhead and envelopes, and other printed materials for CPA's marketing and communications purposes. The Harmon Press is a union printer and the contract is for an NTE of \$24,000.

Keyes & Fox was contracted to provided legal services to CPA related to its energy procurement, legislative, and regulatory activities. The contract amount is for an NTE of \$25,000.

A list of non-energy contracts executed under the Executive Director's signing authority is attached. The list includes open contracts as well as all contacts, open or completed, executed in the past 12 months.

**Staffing Update**

Hui Lisano has been hired as CPA's Controller to manage accounting processes and other related activities, which are currently provided through a contract with the Maher Accountancy firm. Ms. Lisano is a Certified Public Accountant, began her career with PwC and Arthur Anderson and has been the controller at both public agencies and private companies. Ms. Lisano was part of the team that started LA Care Health Plan, the state's largest Public HMO. She began at CPA on September 30.

**Upcoming Events**

**October 2-4, 2019 Net Zero Conference:** CPA is a sponsor of the 2019 Net Zero Conference in Los Angeles, which is the region's largest zero net energy building conference and expo. CPA's Commercial Accounts team will be present at the conference to engage with key industry players and decision makers in the net zero energy space. Learn more and register at <https://netzeroconference.com>.

**October 9, 2019 Sustainable Energy Incubator Workshop:** CPA is hosting its next quarterly Sustainable Energy Incubator workshop on Wednesday, October 9 from 12pm to 3pm at the WeWork Auditorium in Downtown LA. This quarter's workshop will feature a discussion on climate change and public health with speakers covering the nexus between clean energy, transportation, air quality, and a healthy environment and community. CPA's Sustainable Energy Incubators are hosted in partnership with the Local Government Commission.

Lear more and register at: <https://cpa-lgc-incubator.eventbrite.com>.

**November 6-7, 2019 CalCCA Annual Meeting:** CPA is the co-host for this year's annual CalCCA Conference which will take place in Redondo Beach. The Conference will include a special luncheon for elected officials on Wednesday, November 6. Please contact Jennifer Ward at [jward@cleanpoweralliance.org](mailto:jward@cleanpoweralliance.org) if you plan to attend the 2019 CalCCA Annual Meeting.

- Attachments:**
- 1) July 2019 Financial Dashboard
  - 2) Customer Opt-Actions Report
  - 3) Non-energy Contracts Executed under Executive Director Authority
  - 4) Opposition letter to Once-Through Cooling plants postponement

YTD  
July  
2019

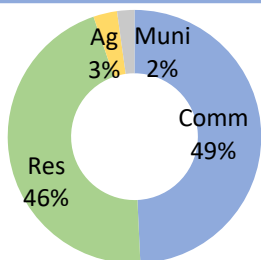
Active Accounts

1,044,000

Opt-Out %

4.5%

YTD Sales Volume  
1,221 GWh

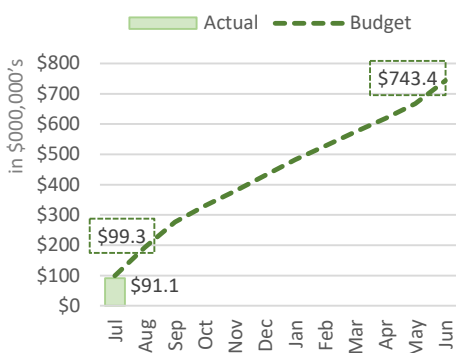


### Summary of Financial Results

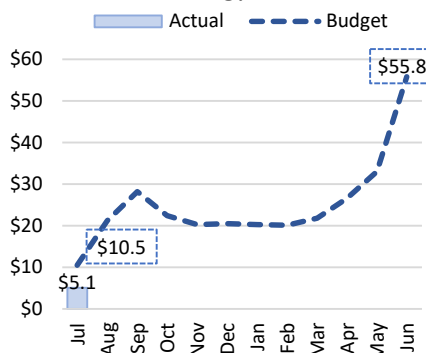
in \$000,000's	July				Year-to-Date			
	Actual	Budget	Variance	%	Actual	Budget	Variance	%
Energy Revenues	\$91.1	\$99.3	-\$8.2	-8%	91.1	99.3	-8.2	-8%
Cost of Energy	\$86.0	\$88.8	-\$2.7	-3%	86.0	88.8	-2.7	-3%
Net Energy Revenue	\$5.1	\$10.5	-\$5.4	-52%	5.1	10.5	-5.4	-52%
Operating Expenditures	\$1.8	\$2.3	-\$0.5	-21%	1.8	2.3	-0.5	-21%
Net Income	\$3.3	\$8.3	-\$5.0	-60%	3.3	8.3	-5.0	-60%

- CPA recorded results for the period that were at the low end of expectations. July results were impacted by cooler than normal weather and low spot market energy prices. July weather and market prices were low probability events and management view July results as a stress case in which the organization performed well. Expenditures remain within authorized budget limits.
- For year-to-date:
  - Revenues of \$91.1 million were 8% below budgeted revenues.
  - Cost of energy of \$86 million were 3% below budgeted energy costs.
  - Operating expenditures of \$1.8 million were 19% lower than budgeted primarily due to lower than budgeted staffing, legal services, and Data & SCE service fees.
  - Net income of \$3.3M was \$5 million below than budgeted net income of \$8.3M.
  - Management believes that available liquidity and bank lines of credit are sufficient for CPA to continue to meet its obligations.

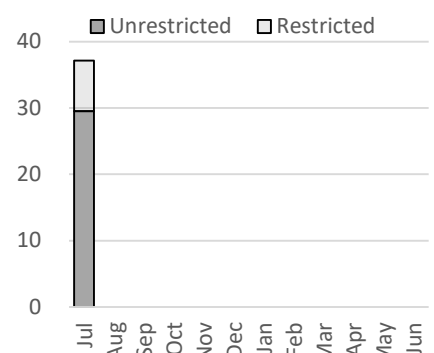
#### Cumulative Revenue



#### Net Energy Revenue



#### Cash & Cash Equivalents



#### Definitions:

Accounts: Active Accounts represent customer accounts of active customers served by CPA

Opt-out %: Customer accounts opted out divided by eligible CPA accounts

YTD Sales Volume: Year to date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers

Revenues: Retail energy sales less allowance for doubtful accounts

Cost of energy: Cost of energy includes direct costs incurred to serve CPA's load

Operating expenditures: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations

Net income: Net income represents the difference between revenues and expenditures before depreciation and capital expenditures

Cash and Cash Equivalents: Includes cash held as bank deposits.

Year to date (YTD): Represents the fiscal period beginning July 1, 2018

## Clean Power Alliance - Residential Customer Status Report - As of September 23, 2019

Opt Percentage by City & County						
CPA Cities & Counties	Default Tier	Total Eligible Accounts	Opt Up %	Opt Mid %	Opt Down %	Opt Out %
AGOURA HILLS	Lean Power	7,405	0.36%	0.22%	0.00%	6.63%
ALHAMBRA	Clean Power	30,641	0.12%	0.00%	0.87%	2.48%
ARCADIA	Lean Power	19,767	0.12%	0.08%	0.00%	2.61%
BEVERLY HILLS	Clean Power	15,208	0.16%	0.00%	1.18%	1.60%
CALABASAS	Lean Power	9,094	0.20%	0.12%	0.00%	3.27%
CAMARILLO	Lean Power	25,941	0.40%	0.27%	0.00%	8.20%
CARSON	Clean Power	25,185	0.09%	0.00%	0.82%	2.34%
CLAREMONT	Clean Power	11,779	0.48%	0.00%	1.71%	7.22%
CULVER CITY	100% Green Power	16,402	0.00%	1.23%	3.27%	3.64%
DOWNEY	Clean Power	33,990	0.06%	0.00%	0.92%	2.84%
HAWAIIAN GARDENS	Clean Power	3,198	0.03%	0.00%	0.91%	1.81%
HAWTHORNE	Lean Power	25,145	0.13%	0.03%	0.00%	1.37%
LOS ANGELES COUNTY	Clean Power	283,636	0.12%	0.00%	1.14%	3.06%
MALIBU	Clean Power	5,644	0.21%	0.00%	1.52%	2.85%
MANHATTAN BEACH	Clean Power	14,269	0.55%	0.00%	2.07%	2.85%
MOORPARK	Clean Power	11,513	0.30%	0.00%	2.73%	13.97%
OJAI	100% Green Power	3,113	0.00%	1.09%	4.47%	7.81%
OXNARD	100% Green Power	50,700	0.00%	0.45%	2.44%	5.79%
PARAMOUNT	Lean Power	12,851	0.03%	0.02%	0.00%	1.39%
REDONDO BEACH	Clean Power	29,732	0.32%	0.00%	1.60%	2.48%
ROLLING HILLS ESTATES	100% Green Power	2,949	0.00%	2.00%	6.68%	5.66%
SANTA MONICA	100% Green Power	47,998	0.00%	0.65%	2.80%	5.35%
SIERRA MADRE	Clean Power	4,871	0.68%	0.00%	1.87%	4.19%
SIMI VALLEY	Lean Power	41,820	0.14%	0.15%	0.00%	9.22%
SOUTH PASADENA	100% Green Power	10,828	0.00%	0.62%	2.58%	3.47%
TEMPLE CITY	Lean Power	11,681	0.10%	0.06%	0.00%	2.64%
THOUSAND OAKS	100% Green Power	45,559	0.00%	1.76%	6.84%	16.40%
VENTURA	100% Green Power	39,562	0.00%	1.11%	3.82%	9.77%
VENTURA COUNTY	100% Green Power	31,214	0.00%	0.86%	4.46%	11.02%
WEST HOLLYWOOD	100% Green Power	23,375	0.00%	0.42%	1.73%	2.05%
WHITTIER	Clean Power	28,439	0.14%	0.00%	1.31%	3.80%
	<b>Total</b>	<b>923,509</b>	<b>0.18%</b>	<b>0.30%</b>	<b>1.76%</b>	<b>5.05%</b>

Opt Percentage by Default Tier					
Default Tier	Total Eligible Accounts	Opt Up %	Opt Mid %	Opt Down %	Opt Out %
100% Green Power	271,700	0.00%	0.92%	3.74%	8.15%
Clean Power Power	498,105	0.16%	0.00%	1.22%	3.28%
Lean Power	153,704	0.18%	0.12%	0.00%	5.28%
<b>Total</b>	<b>923,509</b>	<b>0.12%</b>	<b>0.30%</b>	<b>1.76%</b>	<b>5.05%</b>

## Clean Power Alliance - Non-Residential Customer Status Report - As of September 23, 2019

CPA Cities & Counties	Opt Percentage by City & County					
	Default Tier	Total Eligible Accounts	Opt Up %	Opt Mid %	Opt Down %	Opt Out %
AGOURA HILLS	Lean Power	1,582	0.00%	0.00%	0.00%	6.19%
ALHAMBRA	Clean Power	5,007	0.00%	0.00%	0.58%	6.79%
ARCADIA	Lean Power	3,681	0.00%	0.11%	0.00%	2.83%
BEVERLY HILLS	Clean Power	4,431	0.02%	0.00%	0.63%	2.28%
CALABASAS	Lean Power	1,274	0.00%	0.00%	0.00%	8.24%
CAMARILLO	Lean Power	5,165	1.28%	0.17%	0.00%	7.05%
CARSON	Clean Power	4,941	0.00%	0.00%	0.63%	6.27%
CLAREMONT	Clean Power	1,617	0.06%	0.00%	0.87%	5.26%
CULVER CITY	100% Green Power	3,529	0.00%	0.71%	1.47%	4.02%
DOWNEY	Clean Power	4,769	0.00%	0.00%	0.65%	3.67%
HAWAIIAN GARDENS	Clean Power	584	0.00%	0.00%	0.51%	0.86%
HAWTHORNE	Lean Power	4,113	0.00%	0.00%	0.00%	2.71%
LOS ANGELES COUNTY	Clean Power	29,541	0.03%	0.00%	0.70%	2.32%
MALIBU	Clean Power	1,388	3.96%	0.00%	0.00%	4.11%
MANHATTAN BEACH	Clean Power	2,004	4.84%	0.00%	0.60%	4.19%
MOORPARK	Clean Power	1,895	1.11%	0.00%	0.58%	6.75%
OJAI	100% Green Power	828	0.00%	1.57%	3.50%	6.64%
OXNARD	100% Green Power	8,740	0.00%	0.19%	8.70%	7.81%
PARAMOUNT	Lean Power	3,155	0.03%	0.00%	0.00%	3.87%
REDONDO BEACH	Clean Power	4,970	0.00%	0.00%	0.82%	3.12%
ROLLING HILLS ESTATES	Lean Power	528	5.11%	0.19%	0.00%	7.95%
SANTA MONICA	100% Green Power	9,140	0.00%	0.63%	3.14%	4.51%
SIERRA MADRE	Clean Power	515	0.00%	0.00%	2.14%	2.72%
SIMI VALLEY	Lean Power	5,890	0.20%	0.03%	0.00%	5.99%
SOUTH PASADENA	Clean Power	1,422	0.07%	0.00%	1.34%	1.20%
TEMPLE CITY	Lean Power	1,427	0.00%	0.00%	0.00%	1.12%
THOUSAND OAKS	100% Green Power	7,501	0.00%	0.19%	3.16%	11.17%
VENTURA	100% Green Power	8,659	0.00%	1.47%	4.08%	8.05%
VENTURA COUNTY	100% Green Power	7,110	0.00%	1.34%	3.38%	17.81%
WEST HOLLYWOOD	100% Green Power	4,111	0.00%	0.27%	1.51%	2.68%
WHITTIER	Clean Power	4,229	0.00%	0.00%	0.69%	2.84%
<b>Total</b>		<b>143,766</b>	<b>0.23%</b>	<b>0.26%</b>	<b>1.73%</b>	<b>5.42%</b>

Opt Percentage by Default Tier					
Default Tier	Total Eligible Accounts	Opt Up %	Opt Mid %	Opt Down %	Opt Out %
100% Green Power	49,618	0.00%	0.73%	4.07%	8.47%
Clean Power Power	67,313	0.27%	0.00%	0.69%	3.38%
Lean Power	26,835	0.40%	0.06%	0.00%	4.90%
<b>Total</b>	<b>143,766</b>	<b>0.23%</b>	<b>0.26%</b>	<b>1.73%</b>	<b>5.42%</b>



<b>Clean Power Alliance</b>					
<b>Non-energy contracts executed under Executive Director authority</b>					
<b>Rolling 12 months -- Open contracts shown in Bold</b>					
<b>Vendor</b>	<b>Purpose</b>	<b>Month</b>	<b>NTE Amount</b>	<b>Status</b>	<b>Notes</b>
<b>Keyes &amp; Fox</b>	<b>Legal Services Agreement (Energy Procurement &amp; Legislative and Regulatory Issues)</b>	<b>September 2018</b>	<b>\$ 25,000</b>	<b>Active</b>	
<b>The Harmon Press</b>	<b>Professional Printing Services</b>	<b>September 2018</b>	<b>\$ 24,000</b>	<b>Active</b>	
<b>The Climate Registry</b>	<b>2018 GHG Reporting</b>	<b>September 2018</b>	<b>\$ 4,000</b>	<b>Active</b>	
<b>Abbot, Stringham and Lynch</b>	<b>2018 CEC Power Source Disclosure Audit</b>	<b>August 2019</b>	<b>\$ 12,400</b>	<b>Active</b>	
<b>West Coast Mailers</b>	<b>Bulk Mailing Services</b>	<b>August 2019</b>	<b>\$ 20,000</b>	<b>Active</b>	
<b>InterEthnica</b>	<b>Written Translation Services, Typesetting, and Graphic Design in Spanish, Chinese, and Korean.</b>	<b>August 2019</b>	<b>\$ 10,000</b>	<b>Active</b>	
<b>Holland and Hart</b>	<b>NTE increase for NextEra PPA</b>	<b>August 2019</b>	<b>\$ 19,800</b>	<b>Active</b>	<b>10% increase of original contract NTE of \$18,000</b>
<b>Baker Tilly</b>	<b>FY 2018/2019 Financial Audit</b>	<b>August 2019</b>	<b>\$ 30,000</b>	<b>Active</b>	
<b>Bill Gurnsey</b>	<b>Subset Customer Outreach</b>	<b>June 2019</b>	<b>\$ 15,000</b>	<b>Active</b>	
<b>E3</b>	<b>TOU Rate Analysis</b>	<b>June 2019</b>	<b>\$ 125,000</b>	<b>Active</b>	
<b>Manatt Phelps</b>	<b>Legal Services (JPA governance research)</b>	<b>May 2019</b>	<b>\$ 15,000</b>	<b>Active</b>	
Abbot, Stringham and Lynch	Green-E Certification - 100% Green Power Product	May 2019	\$ 6,200	Completed	
Abbot, Stringham and Lynch	AMI Data Audit	April 2019	\$ 13,500	Completed	
<b>SHI International</b>	<b>VPN and SQL Database (IT)</b>	<b>April 2019</b>	<b>\$ 6,500</b>	<b>Active</b>	
<b>Polsinelli</b>	<b>Legal services (Employment Law)</b>	<b>March 2019</b>	<b>\$ 18,000</b>	<b>Active</b>	
Chapman	Legal services (Credit Agreement)	March 2019	\$ 10,000	Completed	
<b>Mustang Marketing</b>	<b>Communications and outreach to commercial and institutional customers and business groups in the Conejo Valley and Ventura County</b>	<b>February 2019</b>	<b>\$ 7,500</b>	<b>Completed</b>	<b>Amount increased in May 2019 by additional \$7,500 for an additional two months</b>
<b>LOACOM</b>	<b>Social media services and messaging to residential customers</b>	<b>February 2019</b>	<b>\$ 10,500</b>	<b>Completed</b>	
<b>NKE Strategies</b>	<b>Communications and media relations related to SCE undercollection</b>	<b>November 2018</b>	<b>\$ 10,000</b>	<b>Completed</b>	
<b>Corepoint 1, Inc.</b>	<b>Preparation of Implementation Plan Addendum No. 3 (Westlake Village)</b>	<b>November 2018</b>	<b>\$ 19,500</b>	<b>Completed</b>	<b>Reimbursed by City of Westlake Village</b>
<b>M.CUBED (Richard McCann)</b>	<b>Financial review of SCE's proposed early termination agreement with the Coso geothermal plant</b>	<b>July 2018</b>	<b>\$ 15,000</b>	<b>Active</b>	

October 1, 2019

President Marybel Batjer  
Commissioner Liane Randolph  
Commissioner Martha Guzman Aceves  
Commissioner Clifford Rechtschaffen  
Commissioner Genevieve Shiroma

California Public Utilities Commission  
505 Van Ness Avenue,  
San Francisco, CA 94102

**Re: Opposition to Postponing Retirement of Ormond Beach Generating Station and Redondo Beach Generating Station**

Dear Commissioners,

We are legislators, municipalities, energy providers, environmental and community justice groups that are opposed to the Commission's recent Proposed Decision (PD) in the Commission's Integrated Resource Planning Framework proceeding (A.16-02-007) recommending to postpone the retirement of the Ormond Beach Generating Station (Ormond) and the Redondo Beach Generating Station (Redondo). The new procurement specified in the PD makes the extension of Ormond and Redondo unnecessary for reliability and the risks associated with extending the life of these plants outweigh any potential benefits.

The Ormond Station is located in the City of Oxnard in a disadvantaged community that is in the 98<sup>th</sup> percentile of pollution burden according to the CalEnviroScreen, with an 80-85% overall local ranking. Ormond is primarily next to low-income farmworker neighborhoods that are already burdened by pollution from a Superfund toxic waste site, diesel trucking from the nearby port, a paper mill that is one of the county's largest polluters, and some of the highest levels of agricultural pesticides in the state. It's also right in the middle of the largest remaining coastal wetlands in Southern California, the Ormond Beach Wetlands, one of the most ecologically significant restoration projects in the state and a huge priority for the State Coastal Conservancy. City residents and leadership have been actively working to invest in clean energy for the community, such as defaulting all residents and businesses to 100% renewable energy through the local community choice aggregator. Delaying the retirement of this plant would be a step backwards for the community and for the State's environmental goals.

The Redondo station is a similarly poor candidate for an extension. In response to previous statewide decisions requiring the retirement of the Redondo station, the owner of the plant is in the process of selling the plant, and simply put, it is not feasible to reverse that sale. Once the sale has closed, it is anticipated that new, green spaces and parks for the surrounding communities will be developed on the site and delaying these efforts would cost the effected municipality years of work, and waste taxpayer money. In addition to the logistical complications of trying to reverse the sale, it sets a dangerous

precedent that could make future buyers wary of purchasing retired once through cooling plants, for fear of the state reversing their policy decisions.

Additionally, the logic of the PD itself makes the extension of Ormond and Redondo unnecessary. The PD proposes to address a 2,500 MW system capacity shortfall by requiring 2,500 MW of new capacity to be brought online between 2021 and 2023. Of that capacity, 1,500 MW would be in service by 2021 leaving a gap of 1000 MW that can easily be addressed using resources other than Ormond and Redondo. The PD simply overshoots the mark in recommending the extension of plants that are not needed to meet the states reliability requirements.

We urge the Commission not to move forward with any plans to recommend delaying the retirement of the Ormond and Redondo Beach Generating Stations.

Sincerely,