



REGULAR MEETING of the Board of Directors of the Clean Power Alliance of Southern California

Thursday, September 1, 2022

2:00 p.m.

SPECIAL NOTICE: Pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, and enacting Resolutions, and as a response to mitigating the spread of COVID-19, the Board of Directors will conduct this meeting remotely.

[Click here to view a Live Stream of the Meeting on YouTube](#)

If the YouTube stream is not working, please use the zoom link.

*There may be a streaming delay of up to 60 seconds. This is a view-only live stream.

To Access the Meeting:

<https://us06web.zoom.us/j/84912360644>

or

Dial: (346) 248-7799 Meeting ID: 849 1236 0644

PUBLIC COMMENT: Members of the public may submit their comments by one of the following options:

- Email Public Comment: Members of the public are encouraged to submit written comments on any agenda item to clerk@cleanpoweralliance.org up to four hours before the meeting. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.
- Provide Public Comment During the Meeting: Please notify staff via email at clerk@cleanpoweralliance.org at the beginning of the meeting but no later than immediately before the agenda item is called.
 - You will be asked for your name and phone number (or other identifying information) similar to filling out a speaker card so that you can be called on when it is your turn to speak.
 - You will be called upon during the comment section for the agenda item on which you wish to speak on. When it is your turn to speak, a staff member will unmute your phone or computer audio.
 - You will be able to speak to the Board for the allotted amount of time. Please be advised that all public comments must otherwise comply with our Public Comment Policy.
 - Once you have spoken, or the allotted time has run out, you will be muted during the meeting.

If unable to connect by Zoom or phone and you wish to make a comment, you may submit written comments during the meeting via email to: clerk@cleanpoweralliance.org.

While downloading the Zoom application may provide a better meeting experience, Zoom does not need to be installed on your computer to participate. After clicking the webinar link above, click “start from your browser.”

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 the Clerk of the Board at least two (2) working days before the meeting at clerk@cleanpoweralliance.org or (323) 640-7664. 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.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

GENERAL PUBLIC COMMENT

CONSENT AGENDA

1. Adopt Resolution 22-09-038 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)
2. Approve Minutes from July 7, 2022, Board of Directors Meeting
3. Receive and File Q2 2022 Risk Management Report
4. Receive and File Annual Electricity Usage by Jurisdiction
5. Receive and File Quarterly Communications Report (June – July 2022)
6. Receive and File Community Advisory Committee Monthly Report

REGULAR AGENDA

Action Items

7. (a) Adopt Resolution 22-09-039 Authorizing the Offer of Membership to the Cities of Hermosa Beach, Monrovia, and Santa Paula to Join CPA with Service to Customers in those Communities to Begin in 2024; and,
(b) Direct Staff to Prepare an Implementation Plan Addendum and any related Documents as Required by the California Public Utilities Commission (CPUC) and for Consideration by the Board at a Public Hearing on December 1, 2022
8. (a) Review 2022 Integrated Resources Plan (“IRP”); and,
(b) Delegate Approval Authority of CPA’s 2022 IRP to the Energy Resources & Planning Committee
9. Approve a 15-year Renewable Power Purchase Agreement with Cape Generating Station 2 LLC (Cape Station Geothermal) and Authorize the Chief Executive Officer to Execute the Agreement

MANAGEMENT REPORT

COMMITTEE CHAIR UPDATES

Director Lindsey Horvath, Chair, Legislative & Regulatory Committee

Director Susan Santangelo, Chair, Finance Committee

Director Robert Parkhurst, Chair, Energy Planning & Resources Committee

BOARD MEMBER COMMENTS

REPORT FROM THE CHAIR

ADJOURN – NEXT REGULAR MEETING ON OCTOBER 3, 2022

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. Those documents are available for inspection online at www.cleanpoweralliance.org/agendas*



Staff Report – Agenda Item 1

To: Clean Power Alliance (CPA) Board of Directors

From: Nancy Whang, General Counsel

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Adopt Resolution 22-09-038 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)

Date: September 1, 2022

RECOMMENDATION

Adopt Resolution No. 22-09-038 finding the continuing need to meet by teleconference pursuant to Government Code Section 54953(e).

BACKGROUND/DISCUSSION

This resolution is required pursuant to AB 361, signed by Governor Newsom on September 20, 2021, so that CPA may continue to meet under the modified teleconferencing rules.

The State of Emergency declared by Gov. Newsom remains in effect and COVID-19 and the Omicron subvariants continue to pose a threat to the health and lives of the public as discussed more fully in Resolution No. 22-09-038. For these reasons, the recommended action is for the Board to adopt Resolution 22-09-038 finding the continuing need to meet by teleconference pursuant to Government Code Section 54953(e).

This Resolution will authorize the Board to hold teleconference meetings within the requirements of AB 361 but does not prohibit the Board from holding in person meetings.

ATTACHMENT

1. Resolution No. 22-09-038 finding the continuing need to meet by teleconference

RESOLUTION NO. 22-09-038**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA FINDING THE CONTINUING NEED TO MEET BY TELECONFERENCE PURSUANT TO GOVERNMENT CODE SECTION 54953(e)****THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:**

WHEREAS, all meetings of the Board Of Directors, the Executive Committee, the Energy, Finance, and Legislative and Regulatory Committee (“Three Standing Committees”), and the Community Advisory Committee (“CAC”) of Clean Power Alliance Of Southern California (“CPA”) are subject to the Ralph M. Brown Act (Cal. Gov. Code §§54950 – 54963) (“Brown Act”); and

WHEREAS, Government Code section 54953(e) of the Brown Act makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency as a result of the COVID-19 pandemic; and

WHEREAS, such State of Emergency due to COVID-19 remains in effect; and

WHEREAS, COVID-19 continues to threaten the health and lives of the public; and

WHEREAS, COVID-19 the Omicron subvariants of COVID-19 remain a concern, and the Los Angeles County Department of Public Health recommends measures to promote social distancing, including recommendations to avoid prolonged exposure to crowded indoor spaces.

NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA THAT:

IT IS DETERMINED, AFFIRMED, AND ORDERED that due to COVID-19, holding in-person meetings of the Board of Directors, Executive Committee, Three Standing Committees, and CAC of CPA will present imminent risk to the health and safety of attendees.

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that meetings of the Board of Directors, Executive Committee, Three Standing Committees, and CAC of CPA may continue to meet by teleconference in accordance with Government Code section 54953(e).

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that this Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (1) 30 days from the date of adoption of this Resolution, or (2) such time the Board of Directors of the Clean Power Alliance of Southern California adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953, or (3) the Board of Directors of the Clean Power Alliance of Southern California adopts a Resolution rescinding this Resolution.

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that the approval of this Resolution is not a “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (“CEQA”) Guidelines Sections 15378(a) and is exempt under CEQA Guidelines Section 15061(b)(3).

ADOPTED AND APPROVED this ____ day of _____ 2022.

Julian Gold, Chair

ATTEST:

Gabriela Monzon, Secretary

MINUTES

REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, July 7, 2022, 2:00 p.m.

The Board of Directors conducted this meeting remotely, pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, enacting CPA Resolutions, and as a response to mitigating the spread of COVID-19.

CALL TO ORDER & ROLL CALL

Chair Julian Gold called the meeting to order at 2:00 p.m. and Gabby Monzon, Clerk of the Board, conducted roll call.

| Roll Call | | | | |
|------------------|---------------------------|-------------------------|-------------------|--------|
| 1 | Agoura Hills | Deborah Klein Lopez | Director | Remote |
| 2 | Alhambra | Jeff Maloney | Director | Remote |
| 3 | Arcadia | Sho Tay | Director | Remote |
| 4 | Beverly Hills | Julian Gold | Chair | Remote |
| 5 | Calabasas | Mary Sue Maurer | Director | Remote |
| 6 | Camarillo | Susan Santangelo | Director | Remote |
| 7 | Carson | | Director | Absent |
| 8 | Claremont | Corey Calaycay | Director | Remote |
| 9 | Culver City | Daniel Lee | Director | Remote |
| 10 | Downey | Donald LaPlante | Alternate | Remote |
| 11 | Hawaiian Gardens | Luis Roa | Director | Remote |
| 12 | Hawthorne | Alex Monteiro | Director | Remote |
| 13 | Los Angeles County | Sheila Kuehl | Vice Chair | Remote |
| 14 | Malibu | Mikke Pierson | Director | Remote |
| 15 | Manhattan Beach | Hildy Stern | Director | Remote |
| 16 | Moorpark | | | Absent |
| 17 | Ojai | Betsy Stix | Director | Remote |
| 18 | Oxnard | Bert Perello | Director | Remote |
| 19 | Paramount | Vilma Cuellar Stallings | Director | Remote |
| 20 | Redondo Beach | Todd Loewenstein | Alternate | Remote |

| | | | | |
|----|------------------------------|-------------------|-------------------|--------|
| 21 | Rolling Hills Estates | Steve Zuckerman | Director | Remote |
| 22 | Santa Monica | Pam O'Connor | Alternate | Remote |
| 23 | Sierra Madre | Robert Parkhurst | Director | Remote |
| 24 | Simi Valley | Ruth Luevanos | Director | Remote |
| 25 | South Pasadena | Diana Mahmud | Director | Remote |
| 26 | Temple City | Fernando Vizcarra | Director | Remote |
| 27 | Thousand Oaks | Kevin McNamee | Director | Remote |
| 28 | City of Ventura | Joe Yahner | Alternate | Remote |
| 29 | Ventura County | Linda Parks | Vice Chair | Remote |
| 30 | West Hollywood | Ann McIntosh | Alternate | Remote |
| 31 | Westlake Village | | | Absent |
| 32 | Whittier | Vicki Smith | Alternate | Remote |

All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT

Dana Murray provided public comment.

CONSENT AGENDA

1. Adopt Resolution 22-07-035 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953 (e)
2. Approve Minutes from June 2, 2022, Board of Directors Meeting
3. Adopt Resolution No. 22-07-036 to Approve Energy Risk Management Policy Amendments
4. Adopt Resolution No. 22-07-037 Approving the Selection of California Community Choice Financing Authority (CCCFA), a Joint Powers Authority, as the Bond Issuer for a Potential CPA Energy Prepayment Financing Transaction and Authorizing CPA to Join the CCCFA as a Founding Member
5. Approve the Selection of Goldman Sachs & Co. LLC and J. Aron & Company, LLC ("Goldman Sachs") as the Prepaid Supplier for a Potential Energy Prepayment Financing
6. Authorize the Chief Executive Officer to Execute Task Order No. 4 with Ascend Analytics for 2022 Mid-Term Reliability RFO Support Services for a Not-to-Exceed Amount of \$172,500
7. Receive and File Quarterly Communications Report (February - April 2022)
8. Receive and File Community Advisory Committee Monthly Report

Director Parkhurst requested clarification on enrollments for the Power Share Program. Ted Bardacke, CEO, indicated that the quarterly numbers were cumulative.

Motion: Vice Chair Kuehl, Los Angeles County
Second: Director Mahmud, South Pasadena
Vote: The consent agenda was approved by a roll call vote.

CLOSED SESSION

9. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: 1

Nancy Whang, General Counsel, reported that no reportable action was taken by the Board of Directors.

REGULAR AGENDA

10. Approve the Following Amendments to Long-Term Power Purchase Agreements:

- A. Second amendment to Arlington Energy Center II, LLC (Arlington) Renewable Power Purchase and Sale Agreement
- B. First amendment to Resurgence Solar II, LLC (Resurgence) Renewable Power Purchase and Sale Agreement
- C. First amendment to Estrella Solar, LLC (Estrella) Renewable Power Purchase and Sale Agreement

Natasha Keefer, Vice President, Power Supply, provided a presentation on amendments to long-term renewable and storage Power Purchase Agreements (PPAs). Ms. Keefer reviewed market conditions impacting clean energy development including interconnection delays, ongoing pandemic-related supply chain impacts, U.S. trade actions, and rising commodity prices. Several of CPA's projects with near-term online dates are experiencing delays and are unable to meet their Commercial Operation Dates (COD). To reduce the risk of contract termination, CPA has negotiated amendments to PPAs that will allow those projects to come online under feasible timelines. Ms. Keefer provided an overview of those three amendments, including the Arlington, Resurgence, and Estrella projects. Ms. Keefer also detailed the benefits CPA will receive in exchange for the amendments for each of the three projects. The Arlington Solar project is seeking a revised COD of June 1, 2023, and project size reduction down to 140 MW solar and 120 MW storage. Resurgence is seeking a revised COD of June 1, 2023. The Estrella Solar project is seeking a revised COD of December 31, 2023, due not only to supply chain challenges but also to delayed approval of a franchise agreement from LA County for a power transmission line in the Antelope Valley. In exchange for the amendments, CPA will receive one-time payments, increases in the contract length of the PPAs, and a reduction in future delays allowable under the contract. Ms. Keefer noted that the resources would contribute to grid reliability and compliance targets and offer attractive pricing despite challenging market conditions.

Vice Chair Kuehl opined that the contract amendments seem reasonable given the supply chain and economic disruptions. In response to Vice Chair Kuehl's question about other requests from developers that CPA declined during negotiations, Ms. Keefer confirmed that it received other requests, including price increases, which CPA declined. Director Zuckerman also expressed support for the amendments and inquired about the rationale behind earmarking one-time payments for community benefits and the benefits of the one-year extensions to the contracts

and pricing. Staff explained that the extensions are economically favorable to CPA, and it is unlikely that CPA can procure new long-term PPAs in the immediate future with attractive prices such as these contracts offer. With regard to community benefits, the Board has expressed previous support for community benefits when they are attached to long-term PPAs. Director Mahmud asked if the Estrella project developers made CPA aware of delays in securing a franchise agreement from Los Angeles County. Mr. Bardacke indicated CPA knew about the delay and worked closely with Los Angeles County Public Works to advance the franchise agreement which should go to the LA County Board of Supervisors in August. Responding to Director Mahmud's question regarding community benefits funds, Mr. Bardacke stated that staff will seek Board input on how the money should be spent. Director Mahmud expressed support for the contract amendments, noting that the fixed price contracts would lower costs over time; complimented staff for their negotiations. Director Luevanos inquired about the impacts on CPA rates and asked if future contracts would include language to protect CPA from similar situations. Mr. Bardacke clarified that the rates approved by the Board in June 2022 already accounted for project delays. Additionally, contract language will address some of the lessons learned throughout the process, beginning with the upcoming Mid-Term Reliability RFOs. Vice Chair Parks expressed a preference to support CPA's contractors and prioritize the importance of projects such as EV charging stations and energy storage. Director Perello asked if the timeline extensions would affect oversight, inspections, or quality control, and Mr. Bardacke clarified that the extensions do not affect provisions of the contracts pertaining to quality control, efficiency, and commissioning time. Chair Gold suggested developing a 'lessons learned' discussion for a future committee meeting.

Motion: Director Mahmud, South Pasadena
Second: Director Parkhurst, Sierra Madre
Vote: Item 10 was approved by a roll call vote.

MANAGEMENT REPORT

Mr. Bardacke thanked the Board for their quick response in signing onto a letter addressing the Financial Security Requirement (FSR) advice letter filed by Southern California Edison. Due to a strong technical argument, unity among the Community Choice Aggregations (CCAs), and political pressure, CPA was not required to post the originally proposed FSR amount and consequently, saved millions of dollars in financing costs that had been budgeted for this fiscal year. Mr. Bardacke advised that on August 1, CPA will release applications for community reinvestment grants of over \$200,000. And on June 28, CPA paid back the remaining \$20 million due for the L.A. County loan and started the new fiscal year debt-free.

Mr. Bardacke discussed the State budget, noting that CPA secured a second round of arrearage payments between \$15 and \$20 million for customers with accumulated debts due to COVID. Funds will be distributed via bill credits and will address some of CPA's accounts receivables and bad debt. The State and Governor's Offices have begun to act on reliability challenges the state is facing, including the proposal to prolong the life of old plants, without many details of the impact on the market. There may be some clean-up legislation to determine how this might be achieved and what investments the California Department of Water Resources (DWR) can make in older power plants; CPA staff hopes to work with legislators in future discussions. Director Mahmud inquired whether the manner in which the DWR implements the procurement authority might give the California

Public Utilities Commission (CPUC) additional flexibility to grant relief from new generation procurement. Mr. Bardacke noted that the CPUC is clear that strategic electricity reliability reserve does not relieve any Load Serving Entities (LSEs) from any procurement obligations. The resources from old power plants would ideally function as a parallel track outside of the market.

COMMITTEE CHAIR UPDATES

Director Parkhurst, Energy Committee Chair, provided status updates on negotiations for the 2021 Mid-Term Reliability RFO and the Power Share and Power Ready programs.

BOARD MEMBER COMMENTS

Vice Chair Parks thanked Director Parkhurst for his leadership as the Energy Committee Chair.

REPORT FROM THE CHAIR

Chair Gold thanked Board Members for their continued engagement and discussion.

ADJOURN

Chair Gold adjourned the meeting at 4:16 p.m.

DRAFT



Staff Report – Agenda Item 3

To: Clean Power Alliance (CPA) Board of Directors
From: Geoff Ihle, Director, Energy Market Risk Management
Approved by: Ted Bardacke, Chief Executive Officer
Subject: 2022 Q2 Risk Management Team Report
Date: September 1, 2022

RECOMMENDATION

Receive and file.

ATTACHMENT

1. 2022 Q2 RMT Report



Quarterly Report of Risk Management Team April 1, 2022 through June 30, 2022 (Q2 2022)

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 was subsequently amended in July 2019, July 2020, July 2021, and July 2022.

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)¹ submits this report in accordance with this requirement. The RMT also reports on ERMP compliance monthly to both the Finance Committee and Energy Planning & Resources Committee.

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. Several 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 includes a list of approved transaction types. All products that have been purchased or sold by CPA during the current quarterly period represent an approved transaction type as listed in Appendix C of the ERMP.

¹ The RMT is comprised of CPA's Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and Vice President of Power Supply.

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 CPA's former scheduling coordinator, The Energy Authority (TEA). The Protocol was approved by the Chief Executive Officer, in consultation with the RMT, and enacted in Q1 2019.

Pursuant to the ERMP, no counterparty credit limit may exceed \$50 million. Due to elevated forward power prices, during the quarter, several of CPA's counterparties credit exposures continued to exceed their designated credit limits. CPA continues to manage these exposures through margining and other credit enhancement requests where contractually permitted. CPA's credit exposure to these counterparties shrunk over the quarter and is expected to continue to shrink as these counterparties deliver energy to CPA through Q3 2022.

D. System of Record

As required by the ERMP, all transactions are being stored both in CPA's systems as well as in CPA's Scheduling Coordinator's (currently Tenaska Power Services, or TPS) trading and risk management system. Similarly, all transaction approvals are being logged and stored on TPS's servers, with information being made available to CPA staff via a secure web portal. The transaction record also includes the confirmation letters for each transaction. CPA is in the process of transitioning its transaction repository to an internal data warehouse, which will provide additional functionality and security features.

E. Position Tracking and Management Reporting

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

- Financial Model Forecast: The financial model captures projected revenues and energy and operating costs and produces various financial reports and forecasts on an accrual basis. The model uses load forecast data produced by CPA, energy contract details from CPA's Front Office and Middle Office systems, revenue projections from CPA's revenue model² and forward prices from the ICE Data Service and TPS.
- Net Position Report: Short- and long-term net position reports are in production, managed directly by CPA procurement staff, and linked to TPS's trade capture system or to CPA's internal energy trading and risk management system (ETRM), currently in development. 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 adhering to the credit policies included in the ERMP, with the above-mentioned market price-induced exceedances being managed by

² CPA's revenue model is currently maintained by a third-party consultant, MRW. Plans are in place to transition that model to being maintained in-house.

the RMT. CPA receives 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 continues to implement risk analysis tools to stress test financial results and validate potential hedging transactions. Current risk analysis focus is on the prompt 12 months.
- **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 ERMP designates specific prompt-year (PY) up to prompt 5-year hedge targets for different product types.

For energy, these targets are measured at the end of the quarter for the following prompt quarter, e.g., Q1 for prompt Q2. RMT reviewed the relevant quarterly hedge targets for 2022 and beyond and identified the following policy deviation:

| Policy Deviation | Required Action |
|---|---|
| Due to an update to the load forecast (resulting in higher forecast energy usage) and a delay in commercial online dates of two projects under long term contract (resulting in lower forecast supply), the Q2 2023 period did not meet the 85% Energy Risk Hedging Strategy minimum at the time of the June 26, 2022, measurement. | The ERMP does not require immediate action to address the policy deviation. Based on CPA's planned hedging activities over the next several months, the deviation is expected to be corrected by the end of September 2022. |

H. Training

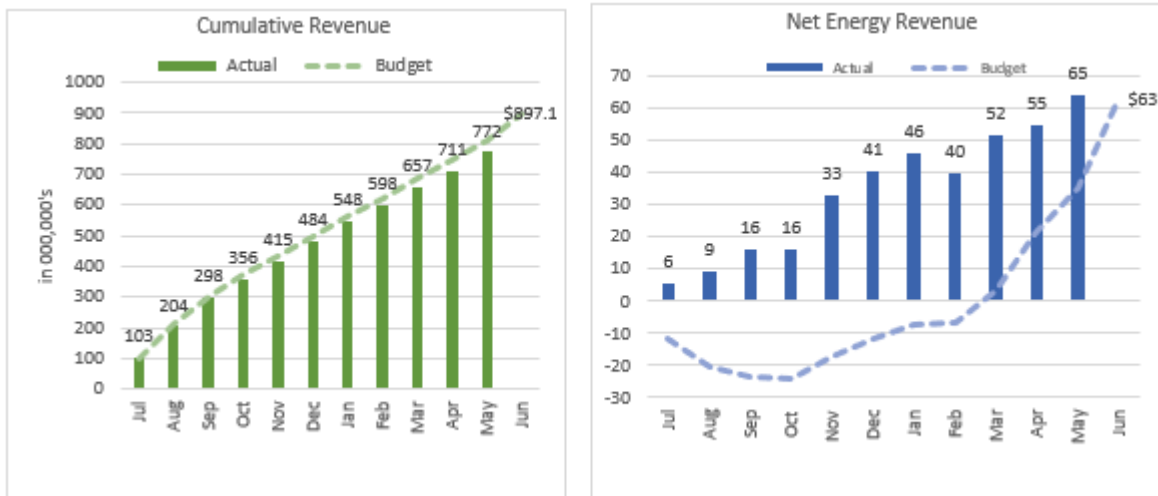
The ERMP acknowledges the importance of ongoing education as part of its risk management framework. Consistent with this, the ERMP outlines certain training requirements. All procurement and risk management staff, including the members of the RMT, were up to date on required training.

I. Hedging Strategy

CPA is compliant with the hedging strategy provided in Appendix A of the ERMP.

J. Financial Performance

CPA was ahead of budget for the first eleven months of FY 2021-22 ending May 31, 2022 and expects to meet or exceed its budget targets for the fiscal year. CPA is in the process of closing its June 30, 2022 Fiscal Year end. CPA will publish audited FY 2021/22 Financial Statements in October 2022.



III. General Market Conditions

Pricing in Q2 2022 reflected spring temperature and load conditions, with stable market prices compared to the previous quarter. Load was lower than forecast in April and May 2022, and higher than forecast in June 2022 as temperatures increased. Day Ahead energy market prices were lower than energy market forward prices used to set CPA 2021/2022 rates and budget. There were no significant market events affecting CPA in Q2 2022.



Staff Report – Agenda Item 4

To: Clean Power Alliance (CPA) Board of Directors
From: Gabriela Monzon, Clerk of the Board
Approved By: Ted Bardacke, Chief Executive Director
Subject: Receive and File Annual Electricity Usage by Jurisdiction
Date: September 1, 2022

RECOMMENDATION

Receive and file.

DISCUSSION

Per CPA's Joint Powers Agreement, in the case of a weighted (voting shares) vote, the corresponding voting shares are based on CPA's overall retail load served, by jurisdiction, in the previous fiscal year. Attachment 1 shows the annual retail load by jurisdiction for FY2021/22. These percentages will be used in the event of a voting shares vote during FY2022/23. A voting shares vote may be called for by a minimum of three members of the Board of Directors following an affirmative vote of the Board via the standard "one member, one vote" voting procedure.

ATTACHMENT

1. Annual Load by Jurisdiction

| Jurisdiction | Annual Retail Load FY 2021/22 (kWh) | % of Total CPA Load FY 2021/22 |
|--------------------------------|---|-----------------------------------|
| LOS ANGELES, COUNTY OF | 3,245,360,775 | 30.26% |
| CARSON, CITY OF | 563,227,980 | 5.25% |
| OXNARD, CITY OF | 511,122,832 | 4.77% |
| SANTA MONICA, CITY OF | 476,712,973 | 4.45% |
| THOUSAND OAKS, CITY OF | 455,467,680 | 4.25% |
| VENTURA, COUNTY OF | 431,528,830 | 4.02% |
| SIMI VALLEY, CITY OF | 421,907,753 | 3.93% |
| BEVERLY HILLS, CITY OF | 379,920,897 | 3.54% |
| DOWNEY, CITY OF | 374,754,404 | 3.49% |
| VENTURA, CITY OF | 353,083,956 | 3.29% |
| HAWTHORNE, CITY OF | 332,991,224 | 3.11% |
| CAMARILLO, CITY OF | 305,699,568 | 2.85% |
| WHITTIER, CITY OF | 303,788,773 | 2.83% |
| ALHAMBRA, CITY OF | 263,134,368 | 2.45% |
| ARCADIA, CITY OF | 255,977,201 | 2.39% |
| CULVER CITY, CITY OF | 246,085,028 | 2.29% |
| WEST HOLLYWOOD, CITY OF | 239,516,263 | 2.23% |
| REDONDO BEACH, CITY OF | 211,352,672 | 1.97% |
| PARAMOUNT, CITY OF | 166,989,090 | 1.56% |
| MANHATTAN BEACH, CITY OF | 144,013,260 | 1.34% |
| CALABASAS, CITY OF | 140,179,734 | 1.31% |
| CLAREMONT, CITY OF | 130,391,382 | 1.22% |
| MOORPARK, CITY OF | 123,900,386 | 1.16% |
| MALIBU, CITY OF | 122,089,104 | 1.14% |
| AGOURA HILLS, CITY OF | 104,147,712 | 0.97% |
| TEMPLE CITY, CITY OF | 102,463,993 | 0.96% |
| SOUTH PASADENA, CITY OF | 89,165,546 | 0.83% |
| WESTLAKE VILLAGE, CITY OF | 78,708,967 | 0.73% |
| ROLLING HILLS ESTATES, CITY OF | 44,857,112 | 0.42% |
| SIERRA MADRE, CITY OF | 40,765,170 | 0.38% |
| HAWAIIAN GARDENS, CITY OF | 33,831,413 | 0.32% |
| OJAI, CITY OF | 30,510,518 | 0.28% |
| Total | 10,723,646,563 | 100% |



Staff Report – Agenda Item 5

To: Clean Power Alliance (CPA) Board of Directors
From: Cara Rene, Director, Communications & Marketing
Approved by: Ted Bardacke, Chief Executive Officer
Subject: Communications Report (June – July 2022)
Date: September 1, 2022

RECOMMENDATION

Receive and file.

ATTACHMENT

1. Quarterly Report

Communications & Marketing Quarterly Update June & July 2022

September 1, 2022

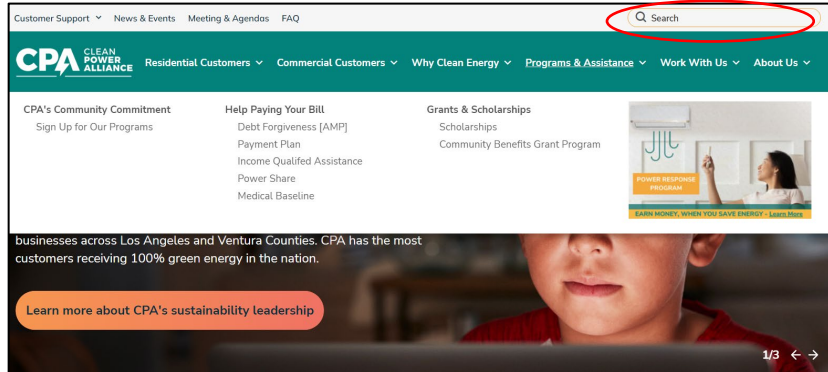


What we're excited about

- Launched several **new website features to improve the user experience**, including improved navigation, a search function, new consolidated programs page, and homepage promotional space to highlight key content
- Spoke on **two event panels**: Beverly Hills climate action movie night and the Breathe SoCal threat of wildfires event
- Continued to **grow our audience on Instagram** by attracting 212 new followers - a 250% increase in accounts reached
- **Engaged several communities** in preparation to communicate about the October 2022 rate change to 100% Green Power. Created various outreach materials and offered support to help communities message to constituents
- Partnered on a **Spanish language marketing campaign with Univision** to promote CPA's brand and Power Share which resulted in increased website traffic and that made the Spanish Power Share page the fourth most visited CPA webpage in July. Direct mail and other marketing outreach has helped Power Share reach nearly 90% enrollment.

Website Optimizations

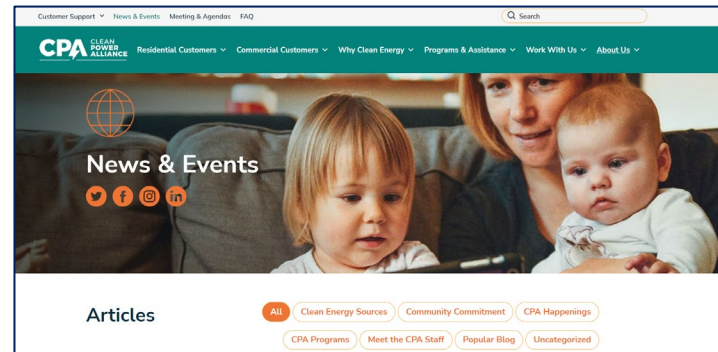
Launched several new web features in July to improve the user experience and better highlight key content.



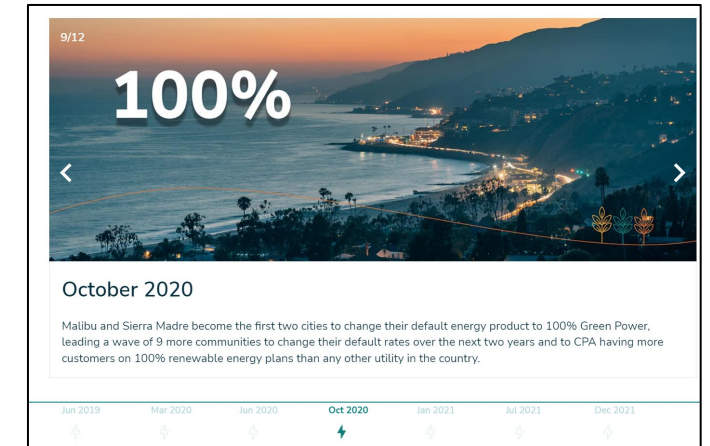
- New navigation**
- Reorganized pages
 - Search function
 - Promotional space on homepage to highlight key content and programs



- New "Sign Up for Our Programs" webpage**
- Consolidated program information for residential and commercial customers

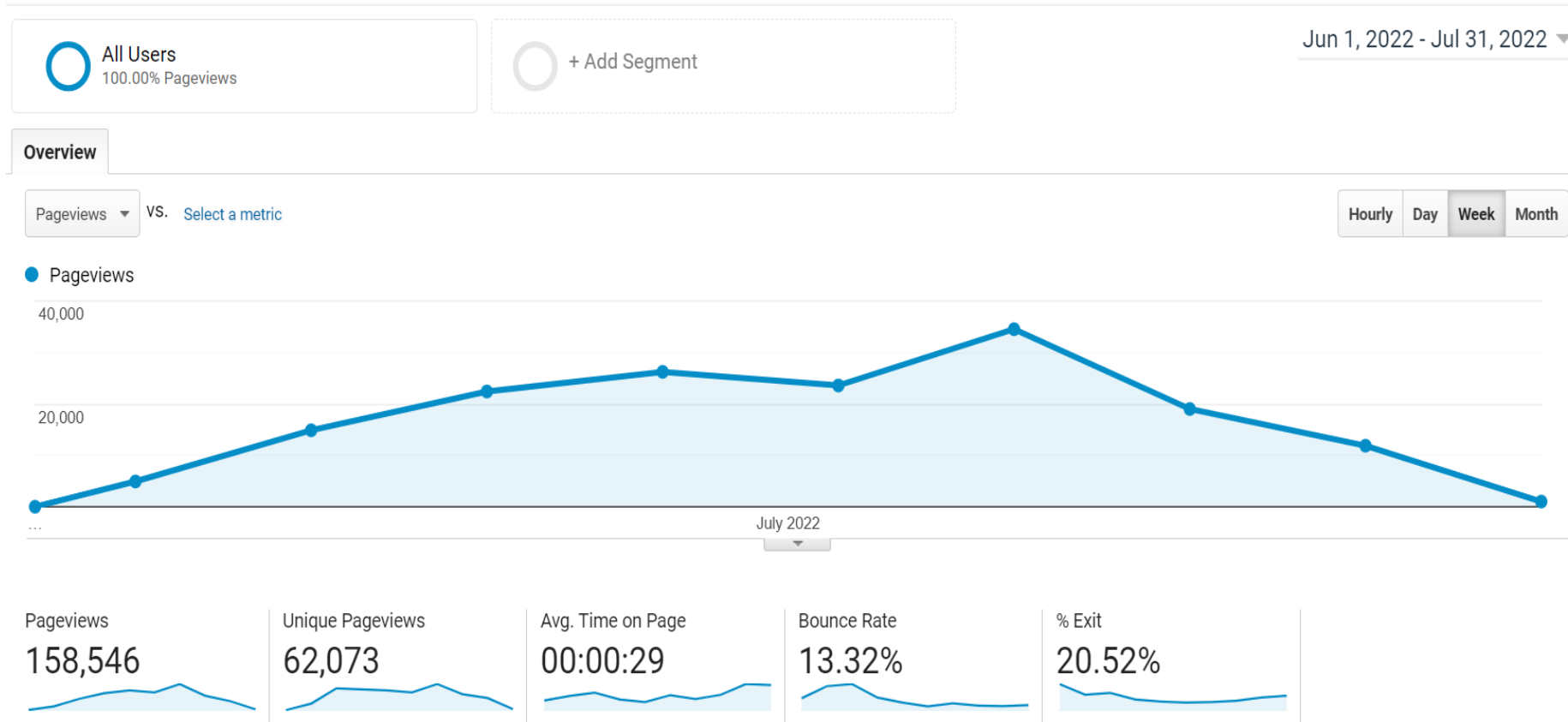


- "News and Events" webpage**
- Share this article option
 - Tagged content to improve finding needed information



- Interactive "About Us" timeline pages**
- Highlights milestones of CPA

Website Performance

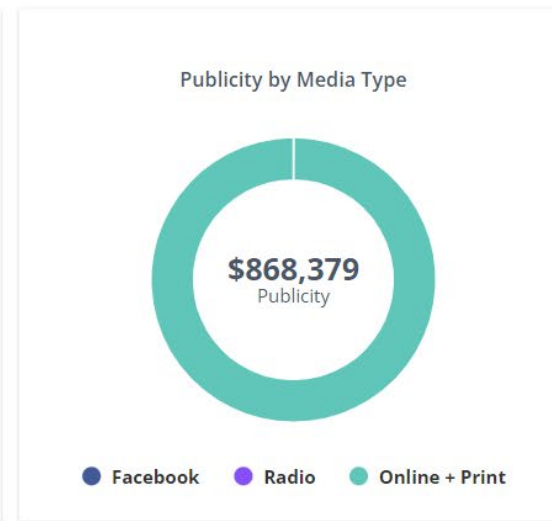
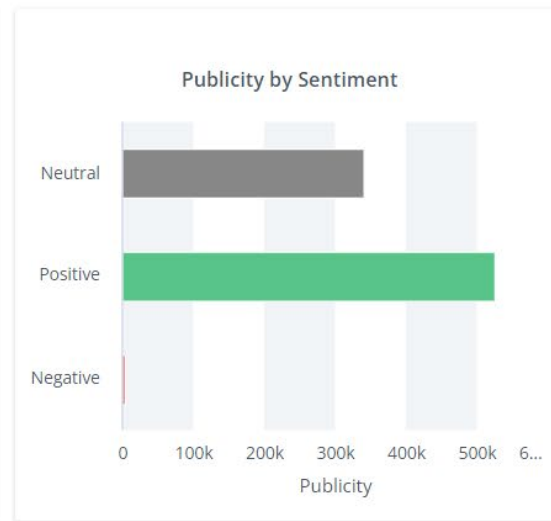
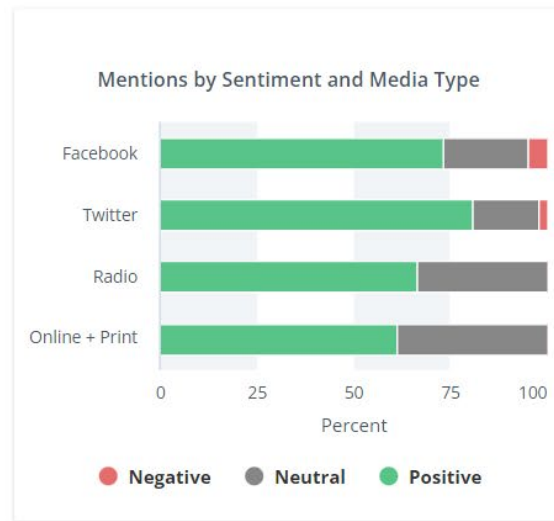


With 158,546 page views, CPA had the highest website views in June and July compared to prior quarters. A Power Share mailer and Univision campaign helped boost website visits.

Earned Media Metrics

More than \$868K in earned media value. June news release announcing new board chair and executive committee members received positive publicity sentiment.

Mention Analytics



Total Radio Audience
396,098

Total Publicity Value
USD \$621

Total Online + Print Audience
48,354,870

Total Online + Print Publicity
USD \$867,758

Total Social Followers
1,241,178

Total Number of Clips 745

[Collapse All Clips](#)

Social Media Highlights

LINKEDIN

Our LinkedIn page had an **18.5% increase** in visitors with 2,654 individual page views, in addition to **892 unique visitors**.

Best performing post: Employee spotlight video “Meet the Team!” received 56 engagements and 808 unique impressions.

TWITTER

Our Twitter page attracted **156 new followers** and averaged **5,800 impressions** per day.

Best performing tweet: Tweet highlighting the Impact Report had 2,496 views.

INSTAGRAM

Our Instagram page added **212 new followers** and had a **250% increase** in accounts reached.

Best performing post: Power Share promo reached 2,167 people

FACEBOOK

Our Facebook page had a reach of **136,331 people** - an 55.5% increase - and had 515,952 paid impressions, a **135.3% increase in total audience**.

Best performing post: Local renewable energy facilities video reached 6,790 people.



Default Rate Change communication materials

CPA created postcards, fact sheets, social media posts, and user guides to inform customers and to prepare communities for communications to residents and businesses.

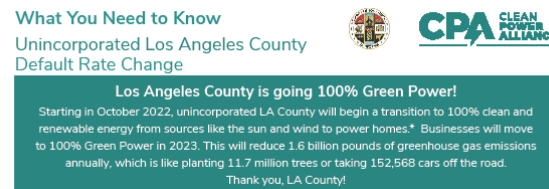


Postcards

Will be sent to customers before and after the rate change to 100% Green Power

Fact sheets

Customized information and FAQs for each impacted community



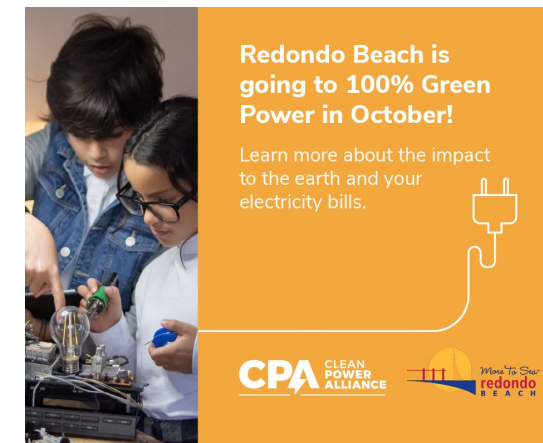
What does this mean for you and your electricity bill?
Using renewable energy helps reduce the impacts of climate change. Because clean energy costs a little bit more, a typical bill for residents and small businesses will go up by approximately 3%, or about \$3 for every \$100 of electricity charges. You could offset this cost by turning up your thermostat a couple of degrees in the summer. Clean Power Alliance supports access to clean energy for all and offers many customer assistance programs. In fact, one-third of our customers receive some sort of bill assistance.

You still have the Power of Choice with CPA. Regardless of your community's default rate selection, you can always switch to one of Clean Power Alliance's other two rate options, Lean Power or Clean Power, or opt-out and select Southern California Edison as your electricity provider. The default change does not affect any customer who has already taken action to change their CPA service. So, if you have already opted up, down, or out, your rate plan will not change.



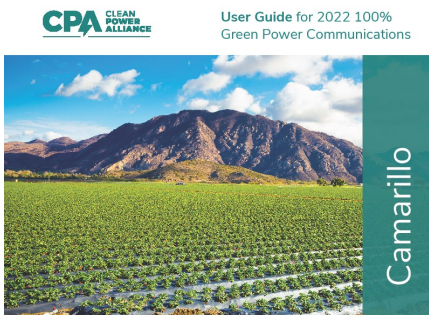
If you want to stay on your current rate plan, just give CPA a call at 888-585-3788 or email customerservice@cleanpoweralliance.org. You can learn more about other rate options at cleanpoweralliance.org/compare.

* This change in 2022 only applies to residential customers on standard rates. Commercial customers will transition to 100% Green Power in fall 2023. Residential customers on CABS/PDRA/ Medical Baseline rates will transition to 100% Green Power in 2024.



Social media posts

Static and animated posts are available for Facebook, Instagram, LinkedIn and Twitter platforms



User guides
To assist communities with using outreach materials



Community Engagement

Staying active in LA and Ventura Counties

- ⚡ **7 presentations** with key stakeholders including city councils and neighborhood groups
- ⚡ **7 community events** that educated the public about CPA programs at street fairs, climate awareness events, and more
- ⚡ **3 meetings** with business associations to share program participation and relevant contracting opportunities

Connecting with partner cities

Presented to the city councils of Calabasas, Culver City, Manhattan Beach and Paramount to highlight key programs and discuss issues impacting their communities.



A Look Ahead

- Sponsoring National Drive Electric Week event Sept. 25
- Joint Rate Comparison postcards and emails sent to customers
- First postcards sent to communities going to 100% Green Power; directing to Our Green Cities webpage
- Bill and website messaging about CARE/FERA/MB freeze ending Oct. 1.

September

October

- Clean Air Day sponsor and event co-host in LA and Ventura counties
- Community Benefits Grant awardees announced
- 100% Green Power Default Rate Change takes effect in eight communities
- Power Content Label postcards sent to customers





Staff Report – Agenda Item 6

To: Clean Power Alliance (CPA) Board of Directors
From: Christian Cruz, Community Outreach Manager
Approved by: Ted Bardacke, Chief Executive Officer
Subject: Community Advisory Committee (CAC) Report
Date: September 1, 2022

RECOMMENDATION

Receive and file.

AUGUST MEETING REPORT

The CAC meeting scheduled for Thursday, August 18, was cancelled. The next Meeting of the CAC is scheduled for Thursday, September 22, 2022.

ATTACHMENT

1. CAC Meeting Attendance

| Community Advisory Committee Attendance | | | | | | | | | | | |
|---|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|
| 2022 | | | | | | | | | | | |
| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov |
| East Ventura/West LA County | | | | | | | | | | | |
| Angus Simmons (Vice Chair) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | |
| Jennifer Burke | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | |
| Debbie West | A | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | |
| San Gabriel Valley | | | | | | | | | | | |
| Richard Tom | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | A | | | | |
| Kim Luu | ✓ | A | A | ✓ | A | ✓ | A | | | | |
| West/Unincorporated Ventura County | | | | | | | | | | | |
| Lucas Zucker | A | A | A | A | ✓ | ✓ | ✓ | | | | |
| Vern Novstrup | A | ✓ | ✓ | ✓ | ✓ | ✓ | A | | | | |
| South Bay | | | | | | | | | | | |
| David Lesser | ✓ | ✓ | ✓ | ✓ | ✓ | A | ✓ | | | | |
| Emmitt Hayes | A | ✓ | ✓ | A | | | | | | | |
| Gateway Cities | | | | | | | | | | | |
| Irella Perez | | | | | | ✓ | ✓ | | | | |
| Genaro Bugarin | ✓ | ✓ | ✓ | A | ✓ | ✓ | ✓ | | | | |
| Westside | | | | | | | | | | | |
| Cris Gutierrez | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | |
| David Haake (Chair) | ✓ | ✓ | A | ✓ | ✓ | ✓ | ✓ | | | | |
| Unincorporated LA County | | | | | | | | | | | |
| Neil Fromer | ✓ | ✓ | ✓ | ✓ | ✓ | A | ✓ | | | | |
| Kristie Hernandez | ✓ | ✓ | ✓ | ✓ | A | ✓ | A | | | | |

Major Action Items and Presentations

January

CEO Update
Diversity, Equity, and Inclusion Plan Update

February

CEO Update
Net Energy Metering 3.0
CAC Final Draft Workplan

March

CEO Update
CPA Bill Positions

April

CEO Update
2022/2023 Rates
2022/2023 Budget Priorities

May

CEO Update
CPA Local Programs Update

June

CEO Update
Call for Officer Nominations
2022 Summer Reliability Landscape

July

Chair and Vice-Chairs Elections
AB 205 Update



Staff Report – Agenda Item 7

To: Clean Power Alliance (CPA) Board of Directors

From: Karen Schmidt, Director, Rates and Strategy

Approved By: Ted Bardacke, Chief Executive Officer

Subject: Expansion Invitations to Hermosa Beach, Monrovia, and Santa Paula

Date: September 1, 2022

RECOMMENDATION

- (a) Adopt Resolution 22-09-039 authorizing the offer of membership to the Cities of Hermosa Beach, Monrovia, and Santa Paula to Join CPA with Service to Customers to Begin in 2024; and,
- (b) Direct staff to prepare an Implementation Plan Addendum and any related documents as required by the California Public Utilities Commission (CPUC) and for consideration by the Board at a Public Hearing on December 1, 2022.

SUMMARY

The cities of Hermosa Beach, Monrovia, and Santa Paula requested to be considered for membership in CPA so that customers in those jurisdictions could begin receiving service from CPA in 2024. These cities collectively represent less than 4% of CPA's current load.

Each city contributed \$10,000 toward the cost of conducting a feasibility study to assess the potential impacts to existing CPA customers of adding each city to CPA's service territory. In accordance with CPA's process for adding new members to the JPA, the CPA Board is being requested to consider the results of this analysis, determine whether to invite Hermosa Beach, Monrovia, and Santa Paula to become members of

CPA, and identify what conditions, if any, should be applied to each city's membership. If the CPA Board declines to invite a city, their \$10,000 contribution will be refunded.

CPA staff estimate that the addition of these three cities to CPA will have a small negative impact to CPA's net revenue in the near-term as a result of current energy market conditions, but that these impacts will be limited by the relatively small size of the new communities, will decline over time as a result of CPA's energy procurement hedge strategy, and will be offset by the benefits of bringing community choice to more customers, reducing greenhouse gas emissions, and expanding CPA's scale, reach, and influence.

At its August 24, 2022, meeting, CPA's Executive Committee expressed support for the recommendation to extend invitations to the three candidate cities.

EXPANSION PRIORITIES, BENEFITS AND RISKS

In 2019 the CPA Board identified the following priorities in considering new member agencies for expansion of CPA's service territory in Los Angeles and Ventura counties:

1. Fill geographic holes within CPA's service territory
2. Seek out load centers where there are synergies with CPA's environmental and/or programmatic goals
3. Increase diversity among CPA membership

Most potential candidate cities paused consideration of joining CPA in 2020 and 2021 because of the COVID-19 pandemic, but in 2022 over a dozen cities met with CPA staff and Board members to express interest in membership. Of these, Hermosa Beach, Monrovia, and Santa Paula each elected to pursue membership this year, while others anticipate moving forward in 2023. Each of the three candidate cities meet at least two of the three Board priorities for expansion.

The benefits of expanding CPA membership include:

- Extending local control and choice to more customers and communities

- Expanded use of renewable energy and reduction in greenhouse gas emissions
- Leveraging outreach and communications across contiguous geographies in CPA territory
- Expanded institutional influence

The risks of expansion are described in the table below, along with mitigating factors for the proposed candidate cities.

| Risk | Mitigants |
|--|--|
| <ul style="list-style-type: none"> • Energy price increases result in higher than expected costs to serve new communities | <ul style="list-style-type: none"> • Relatively small size of new communities limits financial impact |
| <ul style="list-style-type: none"> • Under/over forecasting of load | <ul style="list-style-type: none"> • CPA experience serving similar communities in same climate zones and with similar load profiles • Relatively small size of new communities limits impact of load forecasting deviations |
| <ul style="list-style-type: none"> • Higher than expected customer opt-outs leading to over-procurement | <ul style="list-style-type: none"> • CPA's hedge strategy • Historical experience with enrollments and opt outs |

FEASIBILITY STUDY APPROACH

New member feasibility studies are conducted to evaluate the financial impact to CPA's existing customers of serving a new set of customers based on projected rates and costs in the first year of service, starting in 2024. Feasibility studies can also identify unusual customer or load configurations and potential fatal flaws.

In a time of rising energy prices, prospective new members will always have a higher cost of service and negative financial impact in the near-term relative to existing customers. This is because when the current and forward cost of energy is higher than the average cost of CPA's existing contracts CPA expects the average cost of energy

for new customers will be higher than for existing customers. For short-term contracts, this impact will decline over time because most of CPA's hedges are procured no more than three years forward. For long-term contracts, the potential impact is longer lasting, but the magnitude is dependent on CPA's future renewable energy contract costs, which are uncertain.

IMPACT ANALYSIS

The candidate cities would add a total of approximately 38,000 customers to CPA and a total of approximately 436,000 MWh of new load annually.

| City | Customers | % of CPA Customers | Total Load (MWh) | % of CPA Load | Load Rank among CPA Members |
|---------------|---------------|--------------------|------------------|---------------|-----------------------------|
| Hermosa Beach | 10,670 | 1.1% | 80,508 | 0.7% | 27 |
| Monrovia | 17,291 | 1.7% | 246,718 | 2.1% | 18 |
| Santa Paula | 9,974 | 1.0% | 109,169 | 0.9% | 25 |
| Total | 37,935 | 3.8% | 436,396 | 3.7% | 9 |

This would have the following impact on CPA:

a. Peak load and total generation impact

In aggregate, Hermosa Beach, Monrovia, and Santa Paula would increase total load (kWh) and coincident peak demand (MW) by approximately 3.7%. The analysis did not identify any unusual customer or load configurations.

b. Financial impact

Based on current forward energy prices and forecasted 2024 rates, CPA estimates that in the first year of service, adding the three candidate cities would reduce CPA's expected 2024 revenue by 0.63% to 0.71% depending on each

city's default rate choice. The impact to the average current CPA residential customer bill to make up this projected revenue loss would be about \$0.16 per month (less than \$2.00 per year), or about 0.09% of the average customer bill. These impacts are expected to decline over time as the new load is incorporated into CPA's energy procurement planning and hedge strategy.

No impact to financing costs is expected. Non-energy procurement implementation costs would be limited and would include the cost of preparing and filing an Implementation Plan Addendum, preparing, and mailing customer enrollment notices, and other outreach activities with the new member communities.

c. Renewable energy and greenhouse gas impacts

If Hermosa Beach, Monrovia, and Santa Paula were to join CPA, CPA would increase renewable and carbon-free energy purchases, the amount of which is dependent on each city's default rate selection. Based on CPA's forecast of 2024 emission intensities for its rate products and for SCE's base product, the resulting reduction in greenhouse gas emissions would range from 4.4 million pounds per year if all three cities were to choose Lean Power as their default tier, to 232.2 million pounds per year if all three cities were to choose 100% Green Power as their default tier.

Overall, the addition of Hermosa Beach, Monrovia, and Santa Paula to CPA would have a modest negative impact on CPA's financial position in 2024 and a positive environmental impact. It would extend choice and local control to new customers and communities in Los Angeles and Ventura counties, increase CPA's scale economies in procurement and operations, strengthen CPA's market position, and expand our institutional influence. As a result, staff recommends that the Board invite the cities of Hermosa Beach, Monrovia, and Santa Paula to join CPA without any preconditions.

NEXT STEPS

Should the Board decide to extend a formal invitation to the JPA, there are several next steps that must occur:

- 1. Each candidate city adopts an ordinance to join CPA by November 30, 2022:** Hermosa Beach, Monrovia, and Santa Paula each must adopt an ordinance to join CPA and execute the JPA to implement a Community Choice Aggregation program within its jurisdiction. The ordinance adoption requires two readings and both votes must take place before the CPA Board of Director's December meeting. Cities may choose default rate at that time or defer that decision to 2023.

- 2. CPA admits each candidate city that met step #1 and files an Implementation Plan Addendum with the CPUC by December 31, 2022:** CPA Board holds a public hearing at the December Board meeting and considers a Resolution to approve an Implementation Plan Addendum adding Hermosa Beach, Monrovia, and/or Santa Paula to the JPA. The Implementation Plan Addendum must be filed with the CPUC by no later than December 31, 2022 for these cities to be eligible to be served load by CPA in 2024. The Board would also adopt a resolution to admit the cities into CPA.

- 3. Plan for 2024 launch of service:** Over the course of 2023, CPA would secure energy resources to serve new load and work with new member agencies on default rate selection (if applicable), launch timeline, and community outreach and education.

ATTACHMENTS

1. Resolution 22-09-039
2. Proposed Expansion Authorization Presentation

RESOLUTION NO. 22-09-039**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA AUTHORIZING THE OFFER OF MEMBERSHIP TO THE CITIES OF HERMOSA BEACH, MONROVIA, AND SANTA PAULA TO JOIN CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”) WITH CPA SERVICE TO CUSTOMERS IN THOSE JURISDICTIONS TO BEGIN IN 2024****THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:**

WHEREAS, the cities of Hermosa Beach, Monrovia, and Santa Paula (individually, “City”; collectively, “Cities”) requested to be considered for membership in CPA so that customers in those jurisdictions can begin receiving service from CPA in 2024;

WHEREAS, each City contributed \$10,000 (“Study Fee”) toward the cost of conducting a feasibility study to assess the potential impacts to existing CPA customers of adding each City to CPA’s service territory;

WHEREAS, in 2019, the CPA Board of Directors (“Board”) identified the following priorities when considering new member agencies for expansion of CPA’s service territory in Los Angeles and Ventura counties: (1) fill geographic holes within CPA’s service territory; (2) seek out load centers where there are synergies with CPA’s environmental and/or programmatic goals; or (3) increase diversity among CPA membership (“New Membership Priorities”);

WHEREAS, each of the Cities meets one or more of the New Membership Priorities;

WHEREAS, benefits to expanding CPA membership to the Cities include (1) extending local control and choice to more customers and communities; (2) expanded use of renewable energy and reduction in greenhouse gas emissions; (3) leveraging outreach and communications across contiguous geographies in CPA territory; and (4) expanding scale economies in CPA’s energy procurement and operations;

WHEREAS, the risks and impacts of offering CPA membership to the Cities are small relative to CPA’s size and can be mitigated;

NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA THAT:

IT IS DETERMINED, AFFIRMED, AND ORDERED that CPA hereby authorizes the offer of CPA membership to each City to join CPA with CPA service to customers to begin in 2024; and,

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that the Study Fee shall constitute each City’s pro rata share of CPA’s organizational and planning expenditures.

ADOPTED AND APPROVED this ____ day of _____ 2022.

Julian Gold, Chair

ATTEST:

Gabriela Monzon, Secretary



Proposed Expansion Authorization

September 1, 2022



Agenda and Summary

- ⚡ **CPA territory expansion:** Background and Priorities
- ⚡ **Proposed 2022 expansion candidates:** Hermosa Beach, Santa Paula, Monrovia
- ⚡ **Benefits and impacts**
- ⚡ **Process and timeline:** New cities that join by the end of 2022 begin service in 2024, likely in the fall

Recommendation: Adopt Resolution 22-09-039 authorizing the offer of membership to the cities of Hermosa Beach, Monrovia, and Santa Paula to join CPA with service to begin in 2024, and direct staff to prepare an Implementation Plan Addendum and any related documents as required by the CPUC and for Board consideration on December 1, 2022



Three cities well-aligned with CPA priorities have requested to be considered for JPA membership this year

⚡ Board priorities for expansion include:

1. Fill geographic holes within CPA's service territory
2. Seek out load centers where there are synergies with CPA's environmental and/or programmatic goals
3. Increase diversity among CPA membership

⚡ Hermosa Beach, Monrovia, and Santa Paula elected to move forward with the application process this year

- Each aligns with at least two of the three expansion priorities

| City | Customers | % of CPA Customers | Total Load (MWh) | % of CPA Load | Load Rank among cities |
|---------------|---------------|--------------------|------------------|---------------|------------------------|
| Hermosa Beach | 10,670 | 1.1% | 80,508 | 0.7% | 27 |
| Monrovia | 17,291 | 1.7% | 246,718 | 2.1% | 18 |
| Santa Paula | 9,974 | 1.0% | 109,169 | 0.9% | 25 |
| Total | 37,935 | 3.8% | 436,396 | 3.7% | 9 |



Feasibility Studies

- ⚡ A feasibility study was done for each candidate city with a \$10,000 cost contribution by each city; if the city is not invited, the cost contribution will be refunded.
- ⚡ Feasibility studies look at the financial impact to CPA's existing customers of serving a new set of customers based on projected rates and costs in the first year of service.
- ⚡ In a time of rising energy prices, prospective new members will always have a higher cost of service and negative financial impact in the near-term relative to existing customers.
 - When the current and forward cost of energy is higher than CPA's existing contracts, the average cost of energy procurement for new customers will be higher than for existing customers.
 - For short-term contracts, this impact will decline over time because most of CPA's hedges are procured no more than three years forward.
 - For long-term contracts, the potential impact is longer lasting, but the magnitude is dependent on CPA's future renewable energy contract costs, which are uncertain.



Benefits and Impact

- ⚡ The near-term impact of the proposed 2022 candidates is small relative to CPA's total load, customer base, and revenue
 - The first-year impact of adding the three candidate cities results in a projected 0.6% - 0.7% reduction in CPA revenue and a small impact to existing CPA customer bills to make up for the lost revenue

| | Projected Bill Impact to Current Customers: Average Residential Bill Example |
|-------------------|--|
| \$/kWh | \$0.00053 – \$0.00059 |
| \$/monthly bill | \$0.15 – \$0.17 |
| % of average bill | 0.09% |

- ⚡ The benefits of continuing to fill out CPA's service territory and expand its reach to new customers and communities are significant
 - Along with expanding choice, environmental benefits, and scale economies in procurement and operations, adding new communities will continue to strengthen CPA's market position and political impact



Process and Timeline

- ⚡ **September 1, 2022:** CPA Board votes to invite candidate cities to join CPA.
- ⚡ **By November 30, 2022:** Candidate cities pass ordinance to join CPA's JPA and proceed with CCA implementation. Cities may choose default rate at that time or defer the decision to 2023.
- ⚡ **December 2022:** CPA Board holds public hearing and considers Resolution to approve Implementation Plan Addendum and to admit cities into CPA.
- ⚡ **By December 31, 2022:** CPA submits Implementation Plan Addendum to CPUC.
- ⚡ **January – December 2023:** CPA secures energy resources to serve new load and works with new member agencies on default rate selection (if applicable), launch timeline, and community outreach and education.
- ⚡ **2024:** Service to new customers begins; launch date to be determined by CPA.



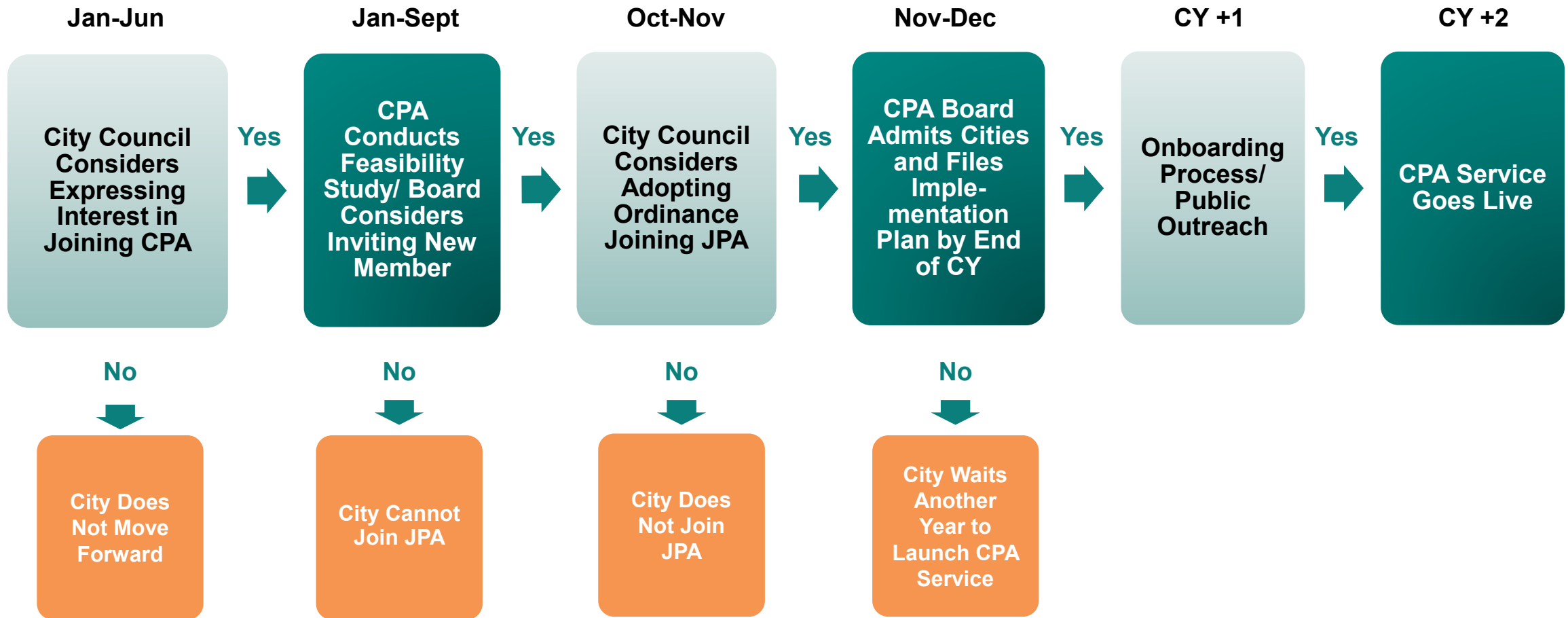
Recommendation

- (a) Adopt Resolution 22-09-039 Authorizing the Offer of Membership to the Cities of Hermosa Beach, Monrovia, and Santa Paula to Join CPA with Service to Customers in those Communities to Begin in 2024; and,
- (b) Direct Staff to Prepare an Implementation Plan Addendum and any related Documents as required by the CPUC for Board Consideration at a Public Hearing on December 1, 2022



Appendix

Typical Process to join CPA





Staff Report – Agenda Item 8

To: Clean Power Alliance (CPA) Board of Directors
From: Natasha Keefer, Vice President, Power Supply
Approved By: Ted Bardacke, Chief Executive Officer
Subject: 2022 Integrated Resource Plan (IRP)
Date: September 1, 2022

RECOMMENDATION

Review CPA's 2022 Integrated Resource Plan (IRP) and delegate authority to the Energy Planning & Resources Committee (Energy Committee) to approve the 2022 IRP for filing with the California Public Utilities Commission (CPUC).

ATTACHMENT

1. 2022 IRP Presentation

2022 Integrated Resource Plan (IRP) Introduction

September 1, 2022



Executive Summary

- ⚡ The Integrated Resource Plan (IRP) is a CPUC proceeding to evaluate long-term grid resource needs
- ⚡ CPA is required to file an IRP every two years. CPA's 2022 IRP is due by November 1st; IRP submissions require approval by CPA's "Governing Body"
- ⚡ During August and September, staff is seeking feedback on initial modeling results from the Energy Committee, Board, and Community Advisory Committee with the target of completing its final analysis during October
- ⚡ Due to the highly compressed schedule to complete the IRP submissions, staff is seeking to delegate final IRP approval to the Energy Committee, consistent with the Board approval process implemented for the 2018 and 2020 IRPs

Action Requested: Delegate 2022 IRP approval authority to the Energy Planning and Resources Committee





Agenda

- ⚡ Background
- ⚡ Preliminary Results
- ⚡ Action Requested



Background



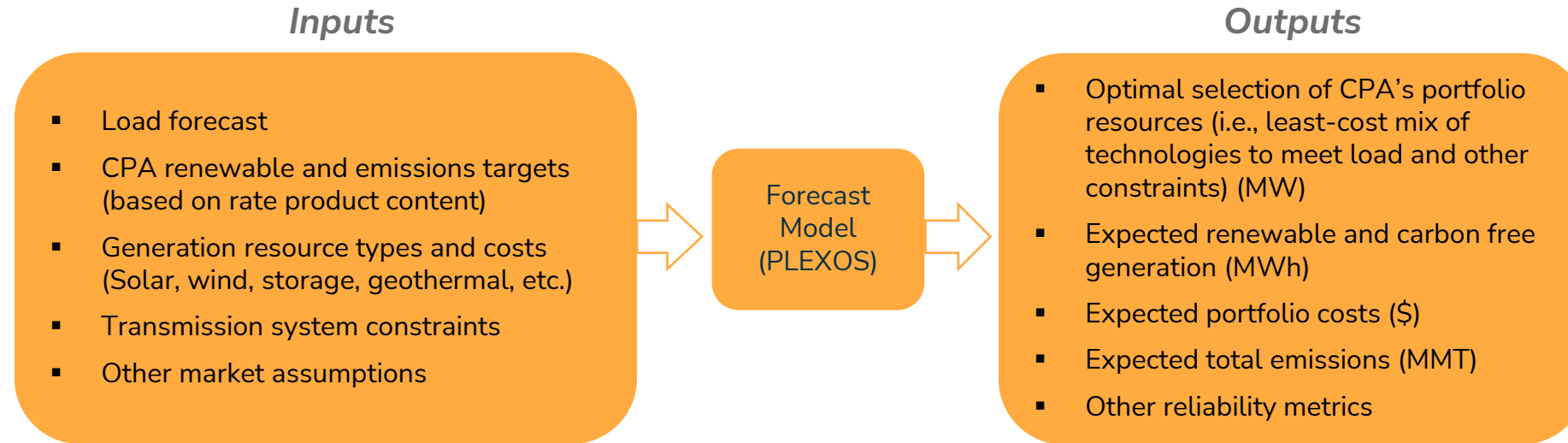
What's the IRP?

- ⚡ The IRP proceeding is an important forum for statewide planning and may result in procurement orders for CPA from the CPUC
- ⚡ The IRP planning process also informs CPA's internal long-term power procurement strategy

- ⚡ The CPUC proceeding evaluates the state's resource needs by taking a 10-year-ahead look at electric system needs, based on assumptions developed in conjunction with the CEC (provides demand forecast) and the CAISO (which uses the same assumptions for transmission planning)
- ⚡ The CPUC uses the assumptions to model overall electric system reliability needs, reliability needs specific to areas with transmission limitations (local areas), and system flexibility needs (such as resources needed to integrate renewables)
- ⚡ The assumptions are revised every two years to incorporate changes in the resource mix and revisions to State policies (e.g., higher RPS or GHG targets)
- ⚡ As part of that two-year cycle, LSEs are required to submit plans reflecting their individual procurement preferences and submission requirements as directed by the CPUC
- ⚡ When needs are identified, the CPUC authorizes procurement in the form of a Commission Decision



IRP Modeling



- ⚡ CPA's plans will be optimized to achieve the three goals of reliability, GHG reduction, and least-cost procurement
- ⚡ Will reflect renewable and carbon free procurement for customer demand (embodied in current and future product offerings), which by 2023 will far exceed California's 2030 renewable energy mandate.



Planning for California's Energy Transition

The IRP is intended to address:

- ⚡ How the California grid will remain reliable with high penetration of intermittent renewables and the retirement of fossil fuel resources
- ⚡ Planning for long-lead time resources, including:
 - Offshore wind
 - Procurement of out-of-state renewables and related transmission
 - Long-duration storage
- ⚡ SB 1020 interim targets of 90% emissions free by 2035 and 95% emissions free by 2040



Inputs and Scenarios

- ⚡ Although not required for the CPUC filing, for internal planning, CPA will be running the following scenarios prior to IRP submission, if possible

| Key Input | Base Case | Low Case | High Case |
|--|--|------------------------|--|
| Load forecast | CPUC-assigned | Low temps and high BTM | High temps and high electrification |
| New build resource types and costs | CPUC assumptions, including resource RA accounting | N/A | CPA internal assumptions reflecting current market pricing and Inflation Reduction Act |
| Forecasted market power prices | Vendor mid-case | No Federal carbon tax | High gas prices |
| CPA renewable and carbon free targets (rate products) | Low Scenario | N/A | High Scenario |



Scenarios for RPS and CF Annual Targets

⚡ For planning purposes, two rate product content scenarios are being modeled for the IRP:

| | Lean Power | Clean Power* | 100% Green Power |
|--|---|------------------------|----------------------|
| High Scenario (CPA achieves 100% renewable for Clean by 2030) | RPS/GHG Free Compliant | 100% renewable by 2030 | 100% renewable today |
| Low Scenario SB 1020 by 2035 – have Lean and Clean merge | RPS/GHG Free Compliant and exceeds SCE’s estimated emissions intensity | | 100% renewable today |

* Clean Power will maintain an emissions intensity target that exceeds SCE’s estimated emissions intensity

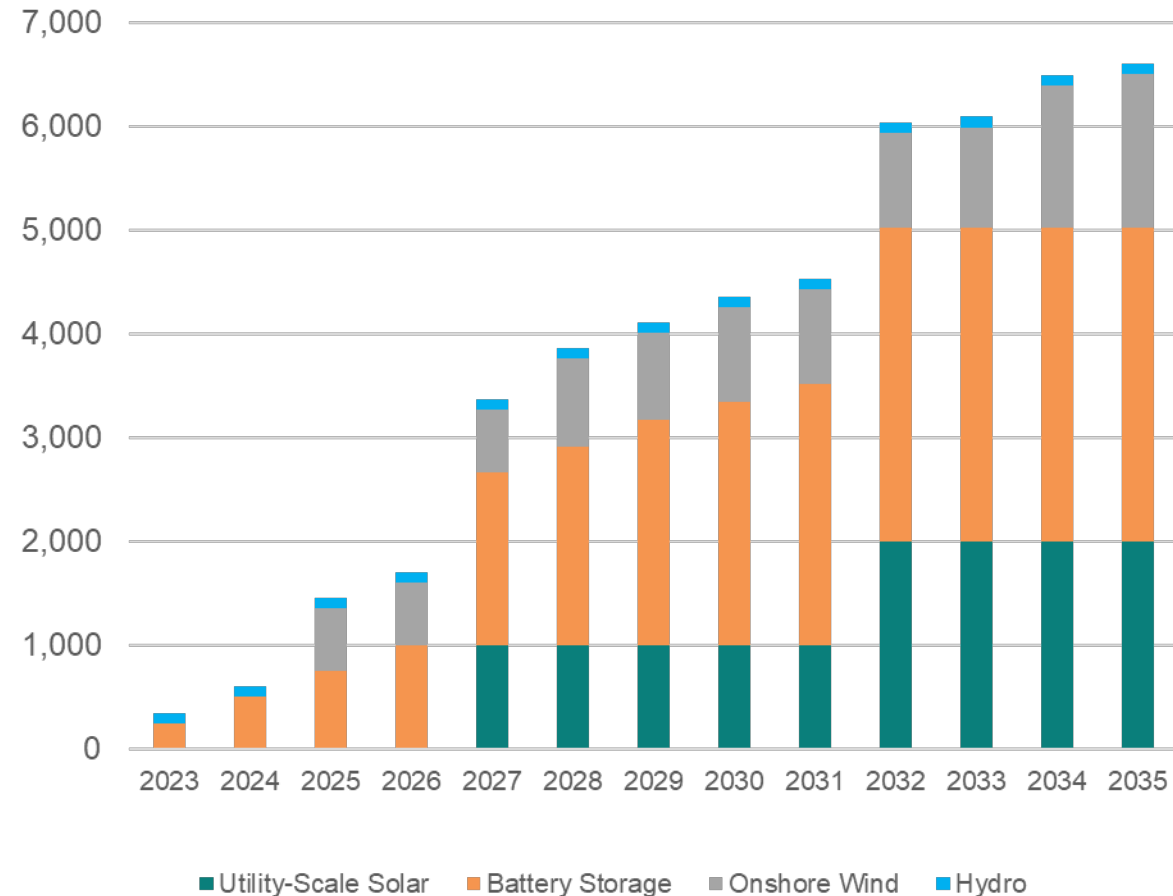
Preliminary Results



Capacity Buildout Scenario Results

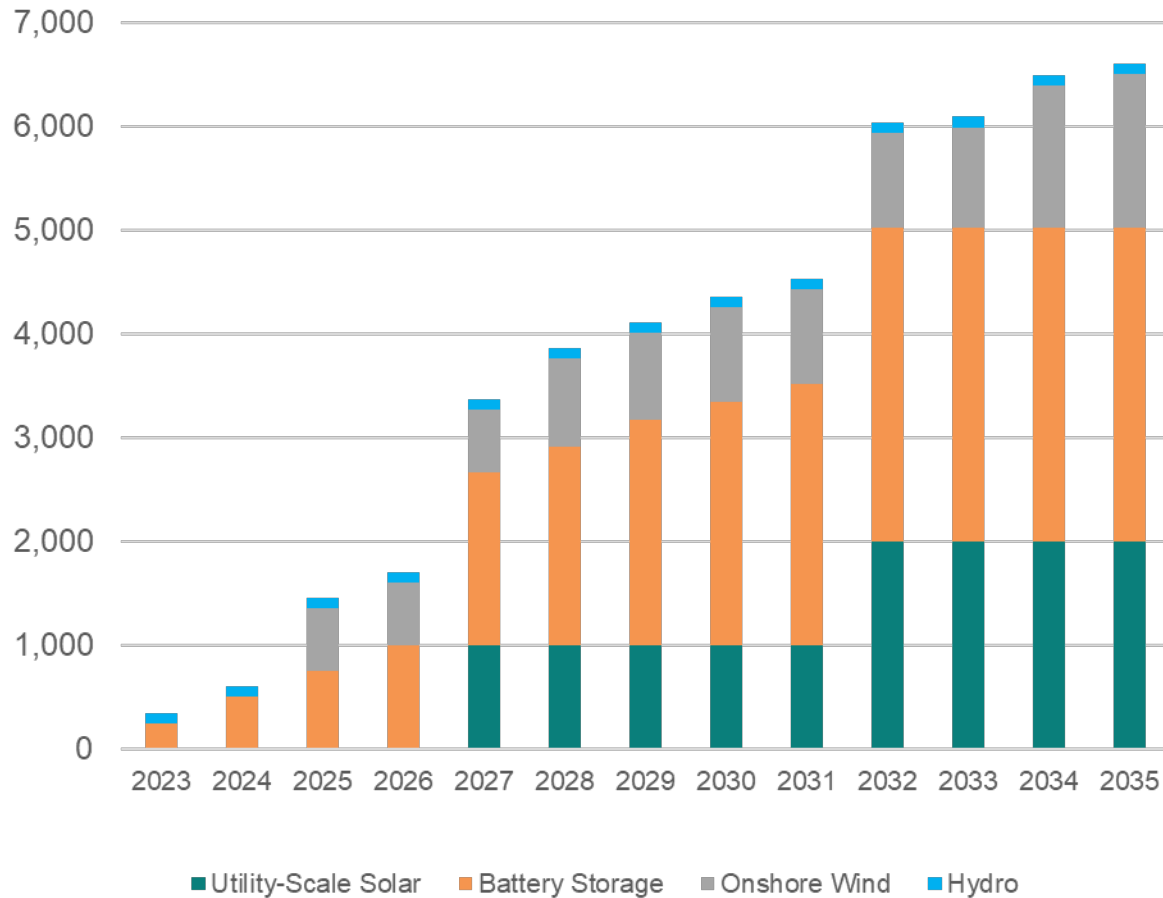
- ⚡ In addition to our existing contracts, CPA will be filling its future resource needs with a mix of solar, battery storage, wind, and existing hydro
- ⚡ Due to CPA's large number of 100% Green Customers, the base case is anticipated to meet and exceed the 2035 30 MMT GHG case target

CPA New Resource Buildout (Cumulative MW)-2022 IRP

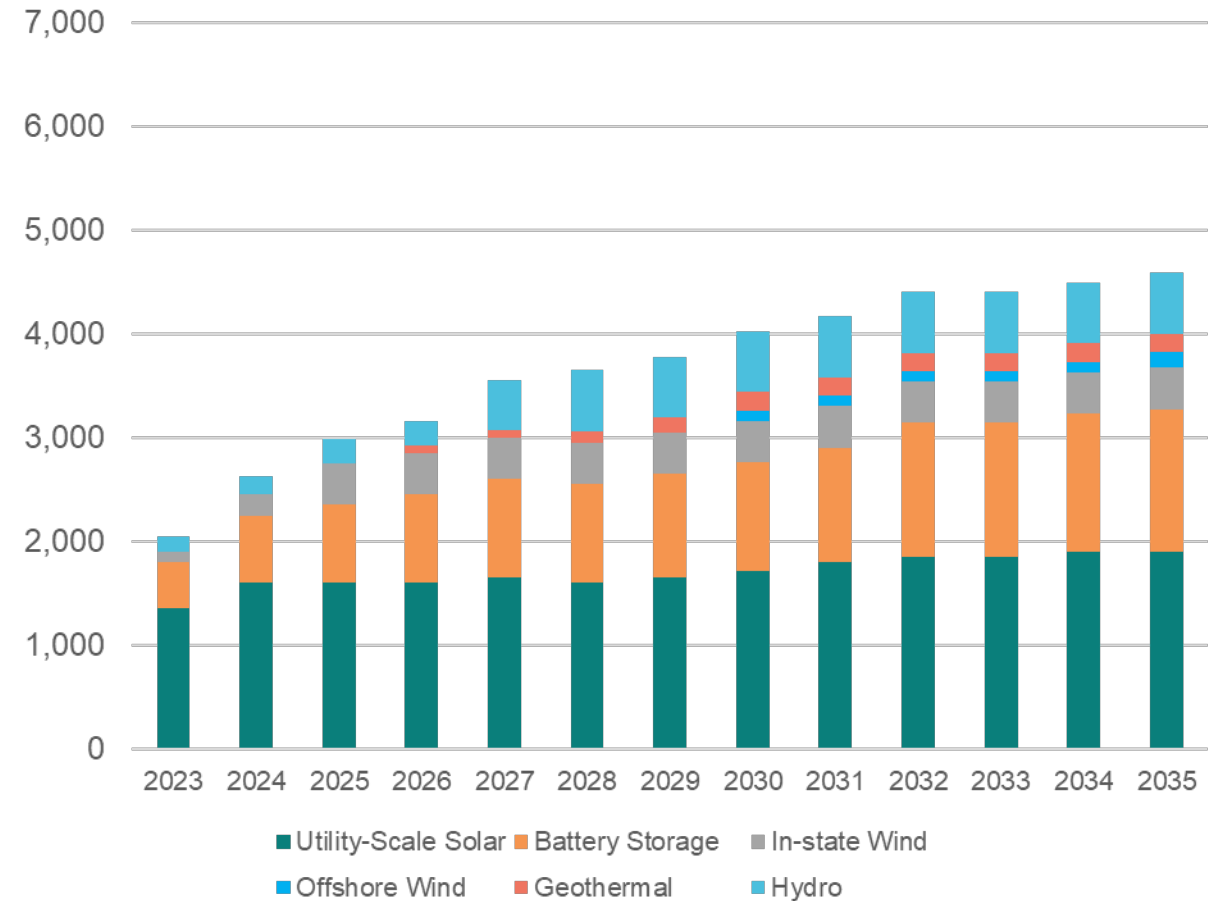


Comparison to 2020 IRP Results

CPA New Resource Buildout (Cumulative MW)-2022 IRP

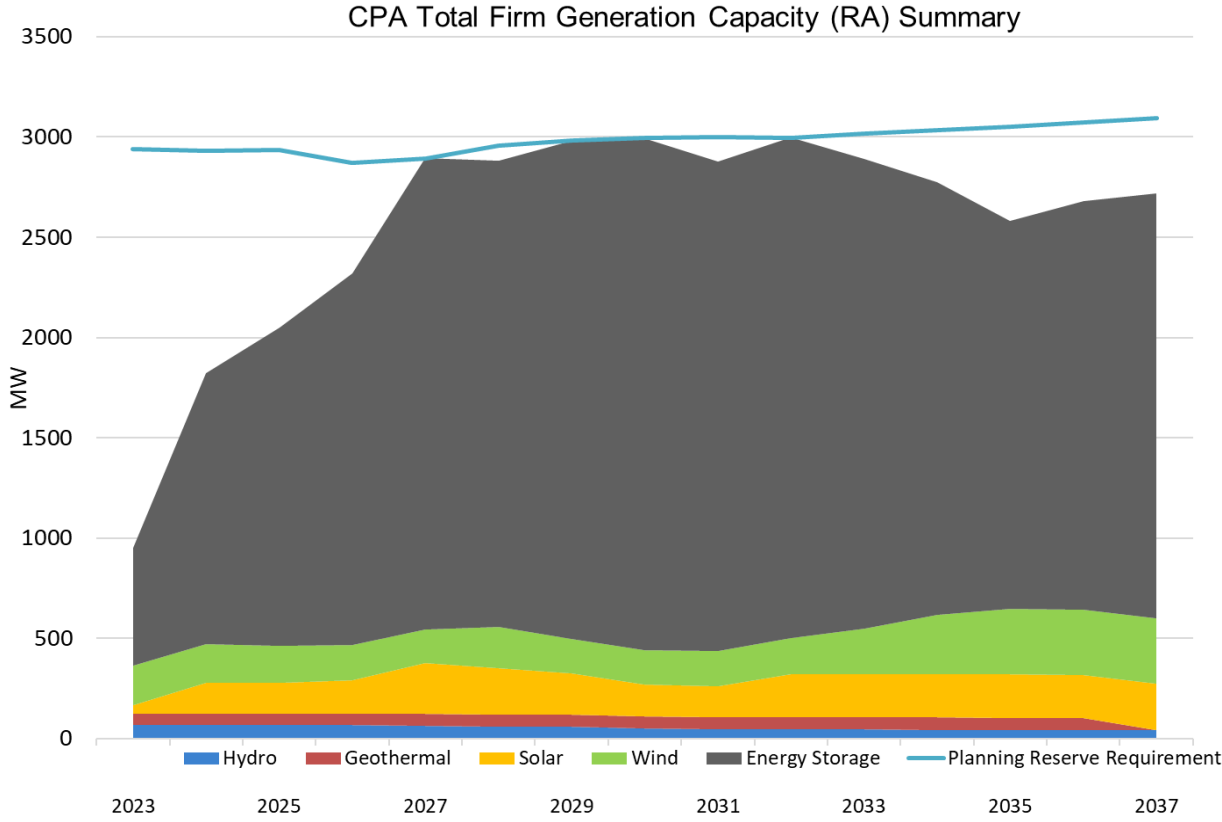


CPA New Resource Buildout (Cumulative MW)-2020 IRP



Reliability

⚡ Beginning in 2024, CPA is meeting the majority of its RA requirements with energy storage and nearly all of its RA requirements with storage by 2027



Key Findings / Discussion

- ⚡ CPA modeling optimizes to achieve the lowest cost power procurement while meeting reliability and environmental compliance
- ⚡ Because of the large number of 100% Green Rate customers, CPA expects to meet and exceed the State 30 MMT GHG targets, even in its lowest renewables case
 - The IRP modeling can inform future Board decisions around rate product content
- ⚡ Resource Adequacy and reliability requirements are a large driver of resource selection, include high amounts of energy storage
- ⚡ Because the CPUC's cost assumptions are out of date, CPA plans to run additional scenarios that reflect current market conditions, regulatory changes, and the passing of the Inflation Reduction Act
- ⚡ Although offshore wind is a candidate resource for CPA's portfolio, offshore wind was not selected due to its high cost
 - The CEC has proposed a preliminary planning goal range of 2,000-5,000 MW of offshore wind for 2030, and a procurement order could be issued in the future. In its additional scenarios, CPA may evaluate a portfolio with some offshore wind. Revised cost assumptions may also bring offshore wind back into the base portfolio.



Action Requested



Action Requested

Delegate 2022 IRP approval authority to the Energy Planning and Resources Committee





Staff Report – Agenda Item 9

To: Clean Power Alliance (CPA) Board of Directors
From: Natasha Keefer, Vice President, Power Supply
Approved By: Ted Bardacke, Chief Executive Officer
Subject: Renewable Power Purchase Agreement with Cape Generating Station 2 LLC
Date: September 1, 2022

RECOMMENDATION

Approve a 15-year Renewable Power Purchase Agreement with Cape Generating Station 2 LLC (Cape Station Geothermal) and authorize the Chief Executive Officer to execute the agreement.

BACKGROUND

2021 Mid-Term Reliability RFO

In June 2021, the CPUC issued its [Decision Requiring Procurement to Address Mid-Term Reliability \(2023-2026\)](#) (CPUC Decision), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026. This procurement is intended to address California's need for new resources on the grid amid the planned retirement fossil fuel resource and the Diablo Canyon nuclear power plant in the 2023-2026 timeframe.¹

To comply with the CPUC Decision, CPA launched its 2021 Mid-term Reliability (MTR) Request for Offers (RFO) on September 29, 2021, with bids due on November 10, 2021. Pursuant to the requirements in the CPUC Decision, CPA's 2021 MTR RFO targeted procurement of three different project types:

¹ Governor Newsom has proposed to extend the life of Diablo Canyon for 5 to 10 years. Even if Gov. Newsom's proposal is accepted, it does not change the CPUC Decision's ordered procurement.

- Conventional renewables plus storage or standalone storage, which must come online by June 1, 2025
- Baseload renewables (e.g. geothermal), which must come online by June 1, 2026
- Long-duration storage (8+ hours of duration), which must come online by June 1, 2026

CPA received a robust response to the RFO from 88 conforming renewable, renewable plus storage, and standalone storage projects. On January 18, 2022, a review team consisting of three Board members from the Energy Committee as well as senior staff consisting of the Chief Executive Officer, Chief Operating Officer, and Vice President, Power Supply met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Planning and Resources Committee (Energy Committee). On January 26, 2022, the Energy Committee reviewed and approved the recommended shortlist, authorizing staff to proceed with power purchase agreement (PPA) negotiations.

From the Energy Committee approved shortlist, CPA entered into exclusive negotiations with 4 projects for contracts 10 years in length or longer. Per CPA's Energy Risk Management Policy, any power purchase transactions greater than 5 years require approval by the Board.

CPA retained Todd Larsen with Clean Energy Counsel to represent CPA and its interests in the negotiation of this agreement. Mr. Larsen's work was overseen by CPA's General Counsel.

PROJECT OVERVIEW

The Cape Station project is a proposed 150 MW new-build geothermal facility with a Commercial Operation Date of June 1, 2028. The project is located in Milford in Beaver County, Utah, near the Intermountain Power Project substation. The project will consist of a series of subsurface geothermal wells and a zero-emission power generating facility.

Given the later online date, the project is fairly early-stage in development, and is still securing permits and transmission interconnection.

Under the proposed agreement, CPA would contract for 33MW of the 150MW facility. CPA would pay for the output of its 33MW share at a fixed-price rate per megawatt-hour with no escalation for the full term of the 15-year contract. CPA is entitled to all product attributes from CPA's share of the facility, including energy and Resource Adequacy.

Developer

Fervo Energy (Fervo) is a newer commercial entity with an experienced geothermal development team that has delivered more than 2 GW of power generation over the last decade. Fervo is the second largest holder of geothermal acreage in the United States and has a pipeline of over 1 GW of geothermal projects. Fervo has several key commercial and technology partners, including Breakthrough Energy Ventures, which is backed by Bill Gates. It has also received research funding support from the US Department of Energy. Fervo has recently signed PPAs for the development of new geothermal resources with East Bay Community Energy (EBCE) and Google.

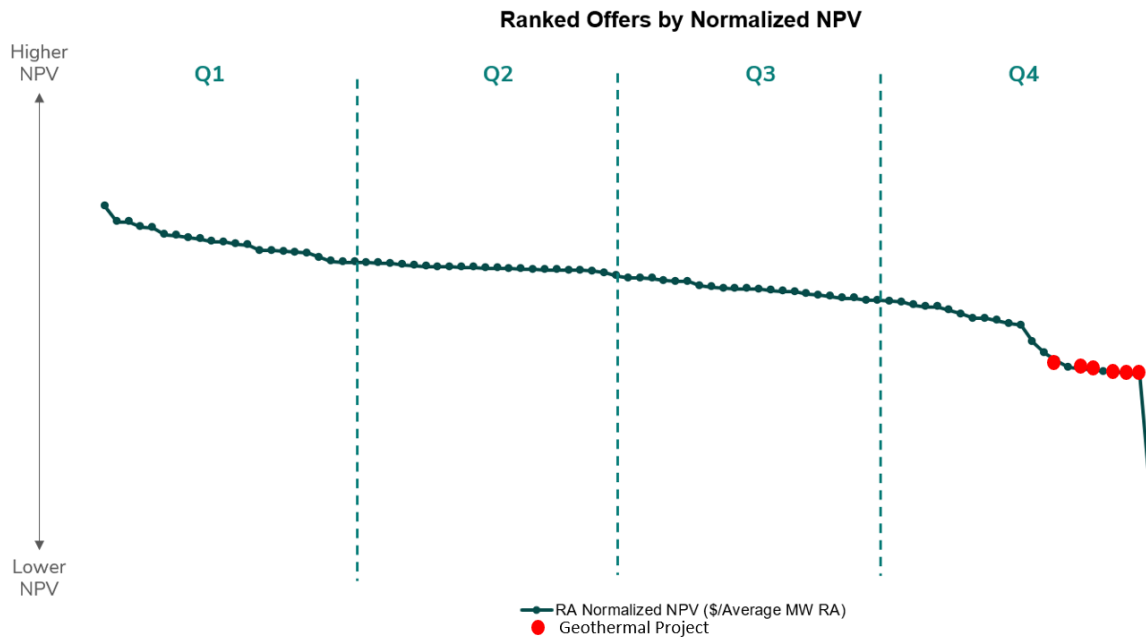
Evaluation Criteria

CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Score, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

Value

Along with all the other geothermal technologies offered into the RFO, the value for this offer falls within the fourth quartile (Q4) of offer submissions ranked on value in the 2021 Midterm Reliability RFO, which also included solar and storage technologies (see chart below). The Cape Station offer was the best-priced geothermal offer submitted in the solicitation.

A publicly available benchmark for geothermal pricing does not exist.



Development Score

The project ranks Low as it is in early-stage development. The project has secured full site control through geothermal resource leases. Initial geothermal development assessments have been completed by the Bureau of Land Management (BLM), including a regional National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS), and a NEPA Environmental Assessment (EA). Additional BLM EAs will be conducted prior to site and transmission line permitting. The developer is also currently in the process of performing a study to review the following: Noise, Land Use, Air Quality, Surface and Groundwater Quality, Historic, Architectural, Archaeological, and Cultural Resources, Endangered and Threatened Species, Wetlands and other Waters of the State/U.S., Flood Plains, Wild & Scenic Rivers and Wildland Designations, Hazardous Materials, Prime Farmland, Geology/Soils/Paleontology, Transportation. The project is in the process of securing an interconnection agreement with a private transmission owner and operator, expected to be secured in Q1 2023.

Workforce Development

The project ranks High as construction for the project will be conducted using a project labor agreement. The developer estimates that CPA's 33 MW portion of the Cape Station facility will create up to 284 full-time construction jobs and 7 new local permanent jobs through maintenance and operations.

Environmental Stewardship

The project ranks Neutral as the project is not located within an ecological avoidance area but is located on undisturbed habitat.

Benefits to Disadvantaged Communities

The project ranks Neutral as it is not located within a Disadvantaged Community (DAC) and is not anticipated to provide workforce opportunities or community benefits to DACs within the region.

Project Location

The project ranks Low as it is located outside of California.

RATIONALE

The projects selected in the 2021 MTR RFO will help CPA meet its procurement mandates under the CPUC Decision. The CPUC Decision requires that CPA procure 59 MW of baseload renewables², which is a narrowly defined compliance category that can be met by just a few technologies, principally geothermal. The 33 MW Cape Station project would be the first baseload renewable resource CPA contracts towards the 59 MW requirement, leaving a remaining 26 MW compliance obligation to be met with future procurement. This project will contribute to California's overall grid reliability needs at a competitive price and will enable CPA to serve more customers with high levels of renewable energy during more hours of the day.

² In the Decision, the category is defined as "generation capacity that has no on-site emissions or is eligible under the requirements of the renewables portfolio standard program, and has at least an 80 percent capacity factor. The resource must not be use limited or weather dependent. No storage projects shall qualify under this provision."

ENVIRONMENTAL REVIEW

This PPA is subject to NEPA as all phases of this project are being developed outside of California. The project will be NEPA reviewed to the point of delivery. CPA has no role, jurisdiction, or authority whatsoever with respect to NEPA review or project approval.

OTHER CONTRACT TERMS

The Cape Station PPA has several unique contract terms:

CPA Termination Right

The CPUC Decision requires that baseload renewables come online by June 1, 2026. Because Cape Station energy deliveries are an import into the CAISO system, and due to unavailability of import allocation rights that would allow the project to count towards CPA's Resource Adequacy requirements until 2028, the contract start date is not until June 1, 2028.

Recognizing that new geothermal resources have long development timelines, the CPUC allows load-serving entities to request an extension up to June 1, 2028, for new baseload renewables to come online to meet MTR compliance. The contract includes a right for CPA to terminate the contract if the CPUC does not approve CPA's request to receive an extension for this project by April 30, 2024.

Inflation Reduction Act

Between the date on which the offer was submitted and the conclusion of negotiations, the Inflation Reduction Act of 2022 (the "Act") was passed into law, providing renewable projects increased tax credit benefits. The project has not yet determined full eligibility for benefits under the Act; however, if the project is able to qualify for additional benefits beyond what was assumed when the offer was originally submitted, the contract allows for CPA to share cost savings with the seller in the form of a lower PPA price.

ATTACHMENTS

1. Cape Station Renewable Power Purchase Agreement Presentation
2. Renewable Power Purchase Agreement with Cape Generating Station 2 LLC³

³ Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.

Cape Station Renewable Power Purchase Agreement

September 1, 2022



Agenda

- ⚡ Action Requested
- ⚡ Background
- ⚡ Project Summary



Action Requested



Action Requested

- ⚡ CPA is seeking Board approval for the Cape Station long-term renewable energy contract from CPA's 2021 Mid-Term Reliability (MTR) RFO:

| Project | Technology | Installed Capacity | Commercial Operation Date | Contract Length | Process |
|--------------|------------|--------------------|---------------------------|-----------------|--------------|
| Cape Station | Geothermal | 33 MW | 6/1/2028 | 15 Years | 2021 MTR RFO |



Background



2021 Mid-Term Reliability Compliance

- ⚡ In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) (CPUC Decision), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026:

| Resource Type | Online By | | | |
|-----------------------------|-----------|------|------|-------|
| | 2023 | 2024 | 2025 | 2026* |
| Reliable Capacity (General) | 118 | 354 | 89 | |
| Baseload Renewables | | | | 59 |
| Long-Duration Storage | | | | 59 |

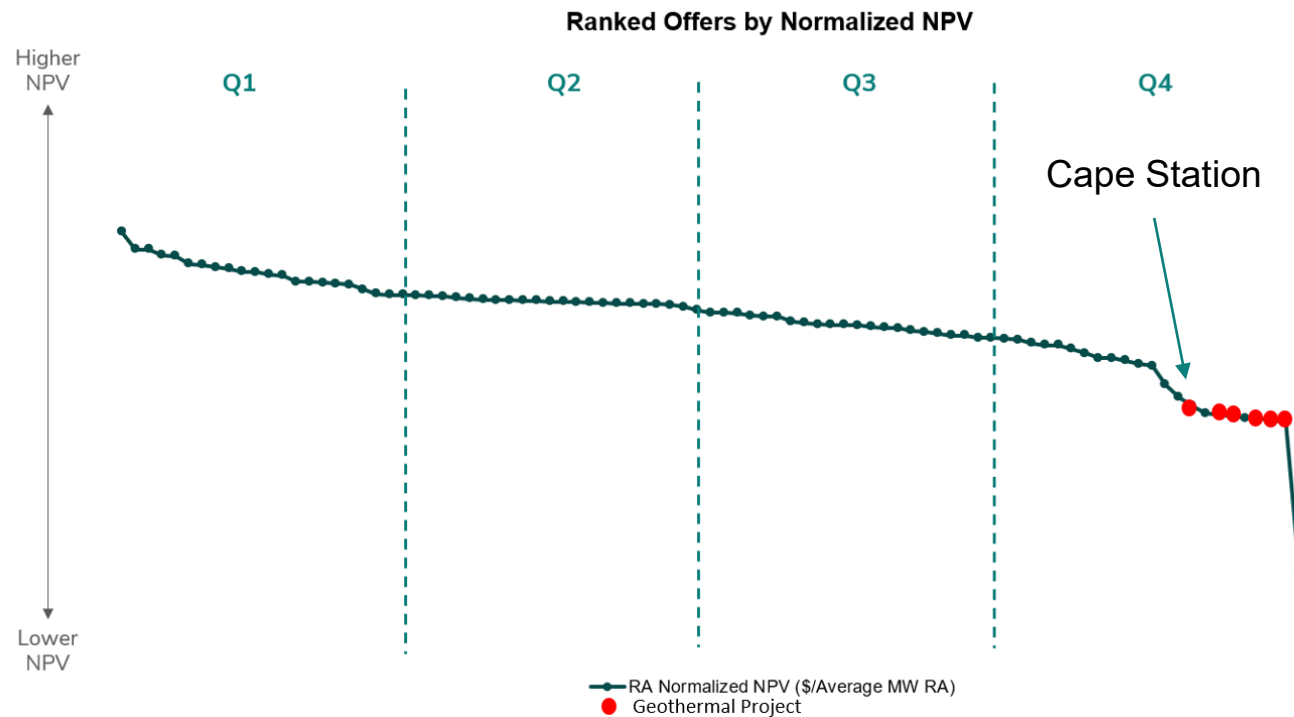
*Because baseload renewables and long-duration storage technologies are considered long-lead time resources, the CPUC allows LSEs to request extensions to bring these resources online by June 1, 2028

- ⚡ To comply with the procurement order, CPA launched its 2021 MTR Request for Offers (RFO), which closed in November 2021



RFO Valuation

- ⚡ The 2021 MTR solicited for various technologies, including solar, battery storage, and geothermal
- ⚡ Offers for geothermal were situated within the fourth quartile (Q4) of offer submissions on a Net Present Value (NPV) basis
- ⚡ The Cape Station offer was the best-priced geothermal offer submitted in the solicitation



Availability of Incremental Baseload Renewables

- ⚡ Opportunities for new geothermal resources are limited due to resource-dependent siting potential (mostly outside of CAISO or out of state) and lack of transmission capacity into CAISO
- ⚡ Due the limited availability of sites, the MTR order has created increased demand and scarcity pricing for incremental geothermal resources
- ⚡ Given the CPUC's recent Resource Adequacy program reform, it's expected that baseload renewable resources like Cape Station will become highly valuable for RA
- ⚡ Due to industry-wide challenges facing renewable energy development, Cape Station is the only project from the MTR RFO that has completed negotiations
- ⚡ CPA has launched its 2022 MTR RFO for additional compliance resources, including geothermal, but is expecting pricing to come in at levels generally higher than the 2021 MTR RFO. This expectation is consistent with bilateral offer negotiations underway and recently approved by the Energy Committee

Project Overview



Cape Station Geothermal

Project Overview

- ⚡ 33 MW binary cycle geothermal facility (zero emissions)
- ⚡ Located in Beaver County, Utah (approximately 75 miles from LADWP's Intermountain Power Plant)
- ⚡ New build project with a June 1, 2028 online date
- ⚡ Developer: Fervo Energy

Rationale

- ⚡ MTR compliance
- ⚡ Competitively priced baseload renewable generation
- ⚡ CPA termination right if CPUC does not grant MTR compliance extension for long lead time resources

Evaluation Summary

| Criteria | Rank |
|---------------------------|--------------|
| Value | 4th quartile |
| Development Score | Low |
| Workforce Development | High |
| Environmental Stewardship | Neutral |
| Benefits to DACs | Neutral |
| Project Location | Low |



Summary

- ⚡ The Cape Station project will allow CPA to make meaningful progress towards meeting its 59 MW baseload renewable procurement requirement
 - CPA has launched its 2022 MTR RFO to secure additional resources to meet its compliance obligation, as well as evaluating bilateral offers
- ⚡ Cape Station will provide CPA with a cost effective, baseload renewable supply resource
- ⚡ **Action Requested: CPA is seeking Board approval for the 33 MW Cape Station long-term renewable energy contract**



AUGUST 26, 2022 (EXECUTION DRAFT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Cape Generating Station 2 LLC

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility Expansion: The Facility Expansion is a 33 MW expansion phase of a dynamic, resource-specific system resource comprising a geothermal renewable electricity generating facility known as the Cape Generating Station located in Beaver County, Utah.

Milestones:

| Milestone | Expected Date for Completion |
|---|-------------------------------------|
| Evidence of Site Control | Completed |
| Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR | 5/10/2027 |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | 1/1/2023 |
| Executed Interconnection Agreement | 3/1/2023 |
| Expected placed-in-service date for prior phase of Facility | 6/1/2026 |
| Financial Close | ████████ |
| Expected Construction Start Date | ████████ |
| Initial Synchronization | 5/1/2028 |
| Executed Dynamic Scheduling Agreement | 10/1/2027 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 6/1/2028 |

| Milestone | Expected Date for Completion |
|---|------------------------------|
| Expected Date of CAISO Commercial Operation | 6/1/2028 |
| Expected Commercial Operation Date | 6/1/ 2028 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 274,626 |
| 2 | ████████ |
| 3 | ████████ |
| 4 | ████████ |
| 5 | ████████ |
| 6 | ████████ |
| 7 | ████████ |
| 8 | ████████ |
| 9 | ████████ |
| 10 | ████████ |
| 11 | ████████ |
| 12 | ████████ |
| 13 | ████████ |
| 14 | ████████ |
| 15 | ████████ |

Guaranteed Capacity: 33 MW of total capacity for the benefit of Buyer pursuant to this Agreement attributable to the Facility Expansion.

Renewable Rate:

| Contract Year | Renewable Rate (\$/MWh) |
|---------------|--|
| 1 – 15 | \$ [REDACTED] /MWh (flat) with no escalation |

Seller's Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the [REDACTED].

[REDACTED]

Guaranteed Commercial Operation Date: For the Facility Expansion, June 1, 2028

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

Scheduling Coordinator: Seller

Security Amounts:

Development Security: \$60/kW of Guaranteed Capacity.

Performance Security: \$60/kW of Installed Capacity.

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____ (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;

WHEREAS, Buyer is entering into the Agreement with the intention that the NQC of the Facility Expansion will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions, the “**MTR Decision**”) in the category of generating resources that are zero emitting, with at least an eighty percent (80%) capacity factor;

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:

“**AC**” means alternating current.

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

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

“Bankrupt” or **“Bankruptcy”** 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 Assignee” has the meaning set forth in Section 14.5.

“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 Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“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 Revenues**” means the credits and other payments incurred or received by Seller, 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), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means 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, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

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

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

“**CEC Certification and Verification**” means 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 Facility 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*, 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**” means the date Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

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

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

“**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 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 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.

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“**CPM Adjustment Factor**” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit.

“**CPM Price**” has the meaning set forth in Section 3.8(b).

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

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

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

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

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

(a) CAISO, or other balancing authority having jurisdiction, orders, directs, alerts, or provides notice to a Party, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s or balancing authority’s electric system integrity or the integrity of other systems to which CAISO or other balancing authority is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Seller or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the Dynamic Schedule for the Facility during the relevant time period;

(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 other balancing authority or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement or Dynamic Scheduling Agreement with the CAISO or other balancing authority, Transmission Provider or distribution operator.

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

“**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 as set forth in Section 11.3(a).

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.3(c).

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

“**Day-Ahead Schedule**” 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 Facility Meter, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be equal to the Day Ahead Forecast as updated by the Real Time Forecast, expressed in MWh, applicable to the Market Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Market Curtailment Period; *provided*, if the Facility Energy is greater than the Day Ahead Forecast as updated by the Real Time Forecast, then the Deemed Delivered Energy shall be zero (0).

“**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.

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

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

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

“**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 Schedule(s)**” has the meaning set forth in the CAISO Tariff.

“**Dynamic Scheduling Agreement**” has the meaning set forth in the CAISO Tariff for “Dynamic Scheduling Agreement for Scheduling Coordinators.”

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

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

“**Effective Flexible Capacity**” or “**EFC**” means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point associated with delivery of Facility Energy.

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

“**Energy**” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.7.

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

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

“**Excess MWh**” has the meaning set forth in Exhibit C.

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

“**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 for Buyer’s benefit from the Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“**Facility**” means the geothermal 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 Facility Energy to the Delivery Point.

“**Facility Capacity**” means the total generating capacity of all units comprising the Facility, including any expansion projects.

“**Facility Energy**” means the Energy generated by the Facility during any Settlement Interval or Settlement Period bid on behalf of and delivered for Buyer’s benefit as specified in the E-Tags associated with the Dynamic Schedule. Facility Energy shall be the pro rata amount of Energy, net of Electrical Losses and Station Use, where the ratio applied to Energy is represented by the Installed Capacity divided by the Facility Capacity.

“**Facility Expansion**” means the project or portion of a project that Seller will undertake to expand the base Facility capacity (in the amount of at least 33 MW) by an additional amount of capacity not less than the Guaranteed Capacity. Seller may undertake other incremental expansions of the Facility Capacity that are not the Facility Expansion.

“**Facility Meter**” means the 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 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 high voltage side of the main step-up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

"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 and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

"Flexible Capacity" means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

"Flexible RAR" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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.

"Forecasted Product" has the meaning set forth in Section 4.3(b).

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

"Full Capacity Deliverability Status" or **"FCDS"** has the meaning set forth in the CAISO Tariff.

"Future Environmental Attributes" means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of "Green Attributes" herein. 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 and the CPUC; *provided*, “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 (including 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)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) 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 Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“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.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

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

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

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

“Guaranteed RA Amount” is equal to the Qualifying Capacity associated with the Installed Capacity, as such Qualifying Capacity is calculated under counting rules and methodologies in effect and modified by the CPUC or CAISO from time to time during the Contract Term.

“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.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the actual generating capacity of the Facility Expansion, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit H hereto.

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

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate 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 Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement.

“**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.

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

“**IP Indemnity Claim**” has the meaning set forth in Section 16.1(b).

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**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.

“**kWh**” means a 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 with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area Resource**” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“**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.

“**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 a Negative LMP that is equal to or below the Negative LMP Strike Price.

“**Material Permits**” means all permits required for Seller to commence construction, as set forth on Exhibit S.

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

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

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

“**MTR Decision**” has the meaning set forth in the Recitals.

“**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.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than [REDACTED] per MWh ([REDACTED]/MWh).

“**Negative LMP Strike Price**” means [REDACTED] MWh ([REDACTED]/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Section 3.14.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

“**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).

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

“**Performance Measurement Period**” means each Contract Year.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) 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 debt incurred 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” includes the elements identified on the Cover Sheet associated solely with the Installed Capacity.

“Progress Report” means a progress report pertaining to the Facility Expansion 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 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 safety and reliability criteria, and the applicable 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**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

“**RA Compliance Showing**” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“**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 3.8(b).

“**RA Guarantee Date**” means the Commercial Operation Date.

“**RA Shortfall**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b) in a particular Showing Month commencing with the Showing Month that includes the RA Guarantee Date, the amount that the Net Qualifying Capacity plus any Replacement RA (if applicable) that was included in the Showing Month by Seller for Buyer was less than the Guaranteed RA Amount for such Showing Month (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer in which Seller actually delivers Net Qualifying Capacity plus any Replacement RA for Buyer’s benefit pursuant to this Agreement).

“**Real-Time Forecast**” has the meaning set forth in Section 4.3(d).

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

“**Real-Time Price**” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“**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 set forth in Section 2.4.

“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, Future Environmental Attribute, or Capacity Attribute, or Tax Credit.

“Renewable Rate” has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Exhibit C, Section (f) states that the Tax Credit and/or applicable rate that will be claimed with respect to the Generating Facility or Facility is more valuable than Seller’s assumed Tax Credit and rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each one (1) percentage point that the claimed ITC rate is above [REDACTED]; *provided further*, in no event will the Renewable Rate be reduced below \$ [REDACTED] /MWh.

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

“Replacement Green Attributes” 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 and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

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

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

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 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 Contract Term.

“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”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the Facility Energy scheduled by Seller 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.

“Secured Overnight Financing Rate” the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

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

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

“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 or indirect or business interruption damages.

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

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

“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.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, 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 SP15 as set forth in the CAISO Tariff.

“Station Use” means the Energy (including Energy produced by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“Supply Chain Code” has the meaning in Exhibit Q.

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

“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 the PTC, ITC 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; any state tax abatement program that awards partial sales and use tax and partial property tax abatements to eligible renewable energy facilities; federal grants up to \$75 million in direct appropriations for geothermal demonstration projects from either GTO, ARPA-E, or OCED; and state grants up to \$20 million in equity and or debt financing to help finance the use and harnessing of clean energy projects.

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

“Termination Payment” has the meaning set forth in Section 11.3(b).

“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 Energy associated with the Facility Expansion to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate capacity associated with the Facility Expansion in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“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 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 Facility Energy onto the Transmission System.

“Ultimate Parent” means Fervo Energy Company, 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.

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 Article, 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 terms “include” and “including” mean “include or including (as applicable) 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 set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6, 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.

(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.

(c) The Parties acknowledge that as of the Effective Date, the Guaranteed Commercial Operation Date is past the deadline set forth in the MTR Decision. Buyer shall use commercially reasonable efforts to obtain from the CPUC an extension of the compliance deadline to allow the Facility Expansion to count toward Buyer’s procurement obligation without penalty pursuant to the MTR Decision (an “**MTR Extension**”). If Buyer does not receive a final and non-appealable MTR Extension on or before April 1, 2024, Buyer shall have the right, upon Notice to Seller on or before April 30, 2024, to terminate this Agreement. Upon 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 Buyer shall promptly return to Seller any Development Security then held by Buyer less any amounts drawn in accordance with this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer's rejection thereof within five (5) Business Days of receipt thereof:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

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

(c) An Interconnection Agreement between Seller and the Transmission Provider, and all required arrangements, including the Dynamic Scheduling Agreement, with the CAISO, the participating transmission owner and any other Transmission Provider, shall have been executed and delivered and be in full force and effect and a copy of such agreements delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility, including those associated with the Facility Expansion, have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date 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;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8.

(h) The Facility is providing Resource Adequacy Benefits for the month in which Delivery Term commences;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) that total contracted Facility capacity with third-party offtakers plus the Guaranteed Capacity is equal to or less than the total Facility capacity; and

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

2.3 **Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such 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 reasonably 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. 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.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the 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*, 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 2.4, 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 shall purchase the Product produced by or associated with the Facility Expansion at the Renewable Rate delivered for Buyer's benefit and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer the Product produced by or associated with the Facility Expansion and delivered for Buyer's benefit consistent with the terms of this Agreement. 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*, no such re-sale or use shall relieve Buyer of any obligations hereunder.

3.2 **Sale of Green Attributes.** 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. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Seller.

3.4 **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.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), 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 Renewable Rate. 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 3.5(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 to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to [REDACTED] days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate minus (b) the FMM LMP applicable to the Delivery Point for such Settlement Interval, and thereafter zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes associated with the Guaranteed RA Amount.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits, including Flexible Capacity (if technically and financially feasible in Seller's sole discretion), to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits associated with the Installed Capacity to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, 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.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially

in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer's RA Compliance Showing for such Showing Month.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each Showing Month in which there is an RA Shortfall Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each Showing Month in which there is an RA Shortfall, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (A) the Guaranteed RA Capacity as adjusted under the terms of this Agreement of the Facility, minus (B) the Net Qualifying Capacity of the Facility Expansion plus any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity for the Facility Expansion and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer's action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by (ii) the product of (X) the CPM Soft Offer Cap (or its successor) multiplied by (Y) the CPM Adjustment Factor ("**CPM Price**").

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, 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 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. 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. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, 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 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Facility Energy is tracked for purposes of

satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap**. If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including 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 to comply with all of such obligations 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 (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 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, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(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.

3.13 **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 shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, 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.

3.14 **Negative LMP Strike Price**. Buyer may change the Negative LMP Strike Price by providing Notice to Seller at least five (5) Business Days prior to the effective date of such change,

which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided*, the Negative LMP Strike Price identified by Buyer must be less than or equal to [REDACTED] /MWh).

3.15 **Notice of Facility Capacity.** Throughout the Contract Term, Seller shall provide Notice to Buyer within five (5) Business Days of the date any portion of the Facility other than the Facility Expansion achieves commercial operation, including the total amount of Facility Capacity associated therewith.

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 by means of Dynamic Schedules, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall 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 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 with the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(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.

(c) **Energy Products.** If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market, and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

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 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast 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 (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day expected Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Facility Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected (i) Available Capacity and (ii) Energy (items (i)-(ii) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM 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 hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the 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 hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-

Time Forecasts of Facility Energy shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

4.4 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.

(b) [Intentionally Omitted]

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point that is in excess of the 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, (B) is the sum, for all Settlement Intervals with a Negative LMP during the 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 balancing authority, or other charges assessed by the CAISO or other balancing authority resulting from Seller's failure to comply with the Curtailment Order.

(d) Seller Equipment Required for Operating 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 to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable

methodologies. A Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use), and (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, (provided, Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences), and (iii) Station Use may not be supplied from Facility Energy (provided, Seller may supply Station Use from Energy produced by the Facility so long no such Energy is recorded as Facility Energy by the Facility Meter, and subject to the other requirements of this Agreement).

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.**

(i) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall 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 reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer), and Seller shall (A) reimburse Buyer for any cost Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless (1) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June-September, (4) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or other applicable Governmental Authority, or (5) approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned

Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(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. Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event prevents Seller from delivering any such Product.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, (i) any reduction in Product resulting from this Section 4.6 shall not reduce Seller's obligation to deliver Capacity Attributes, except to the extent that such inability or reduction is the result of circumstances set forth in Section 4.6(d), and (ii) subject to the terms and conditions of this Agreement, Buyer has no obligation to pay Seller for any Product from the Facility for which the associated Facility Energy is not or cannot be delivered to Buyer as a result of any of the conditions in this Section 4.6 or a Curtailment Order, other than Section 4.6(c) as to any Buyer Curtailment Period.

4.7 Guaranteed Energy Production. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to ninety percent (90%) of the annual Expected Energy for the applicable Contract Year constituting such Performance Measurement Period]. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) Facility Energy in the amount Seller 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, or Curtailment Periods ("**Lost Output**"). 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 ("**Energy Replacement Damages**"); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (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.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.12, 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 (g) 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 Facility 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 by, or is the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three (3) 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*, 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 has not reimbursed Buyer. 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 Energy delivery under this Agreement.

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 after 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 to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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*, 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, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, and repair 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 in 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 Facility Energy to the Delivery Point.

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*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID, and (iv) provide that in the event of any curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

**ARTICLE 7
METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all 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 Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. The Facility Meter shall be kept under seal, such seal 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 Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) 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, then 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 so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect 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 Facility Energy, Replacement RA, and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Renewable Rate applicable to such Product in accordance with Exhibit C, and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product (and any other amounts due) 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 from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, 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 Secured Overnight Financing Rate as most

recently published prior to the date of the invoice, 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 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 records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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 next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, 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 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 or change of information was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, 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. Seller may replace Development Security or change the form of Development Security to another form of Development Security from time to time upon reasonable prior written notice to Buyer. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer. 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 Seller 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). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the 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 such obligations are satisfied in full.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth 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) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; 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 commercially 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 Renewable Rate 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 Product 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; (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; or (ix) drought.

(d) In order to claim a Force Majeure Event:

(i) The claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence; and

(ii) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) plus the payment of COD Delay Damages equal or exceed [REDACTED] days, and Seller has demonstrated to Buyer's reasonable satisfaction that Seller's failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to [REDACTED] days of Development Cure Period delays but for the one hundred eighty (180) limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon 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 Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of COD Delay Damages, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. 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 Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**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)-day 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 (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, and (B) 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)-day 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 Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 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 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), 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%) threshold 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 within five (5) Business Days after Notice from Buyer, 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 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 sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the 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, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(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*, 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 **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility,

less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. 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 and 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 (i) 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, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) 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, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 prior to the Commercial Operation Date for any reason other than due to Buyer's Event of Default or a termination by Buyer pursuant to Section 2.1(c), neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility Expansion to a party other than Buyer for a period of two (2) years following such Early Termination Date, 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 provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof

Neither Seller nor Seller's Affiliates may sell or transfer rights to the Product attributable to the Facility Expansion, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) 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 approved by Buyer.

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 or other remedy are explicitly 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 use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY 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 CREDITS, 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 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, 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 limited liability company 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 Utah.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility Expansion or the delivery of materials necessary to complete the Facility Expansion, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than 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 (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(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, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility Expansion will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations; *provided*, such requirement shall not apply to labor related to subsurface reservoir and drilling activities or classifications. Seller shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 13.4.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, 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*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required 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 by Seller, 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 execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S ("**Consent to Collateral Assignment**").

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (a) the assignee is a Permitted Transferee;
- (b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (c) 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.

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 and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** 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 (1) utilizing tax equity or cash equity investment, and/or (2) 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*, 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.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon not less than fifteen (15) Business Days' notice by delivering Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit L ("**Assignment Agreement**"), *provided*, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5.

**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 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 forty-five (45) days of initiating such discussions, or within sixty (60) 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, each Party shall bear its own respective costs, expenses and attorneys' fees in connection with said action.

15.4 **Venue.** In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

**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) for third-party claims 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) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an "**IP Indemnity Claim**").

(c) 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 the Indemnifying Party and satisfactory to the Indemnified Party, provided, 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, 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 [____] Million Dollars (\$[____],000,000) per occurrence, and an annual aggregate of not less than [____] Million Dollars (\$[____],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 insurance policy in a minimum limit of liability of [____] Million Dollars (\$[____],000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 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. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(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 provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 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, directors 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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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.** 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 **Further 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 **Press Releases.** 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.**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, 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.

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 of 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, 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 15. 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 the 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.

CAPE GENERATING STATION 2 LLC

By: _____
Name: Tim Latimer _____
Title: Chief Executive Officer _____

CLEAN POWER ALLIANCE OF
SOUTHERN CALIFORNIA, a California
joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Cape Station

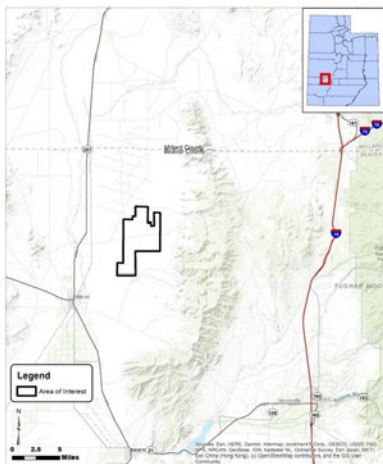
Federal Lease IDs (portions of): UTU-95314, UTU-95318

County: Beaver

Zip Code: 84751

Latitude and Longitude (proximate to): 38.508, -112.911

Facility Description: A 33 MW Expansion of a Binary Geothermal Electric Generating Facility located in Beaver County, Utah.



Delivery Point: IPPUTAH

Facility Metering Point: See Single Line Diagram in Exhibit R

P-node: INTERMT_3_N506

Transmission Provider: Longroad Energy

Additional Information:

EXHIBIT B

CONSTRUCTION AND COMMERCIAL OPERATION OF FACILITY EXPANSION

1. Construction of the Facility Expansion.

- (a) “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility Expansion, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility Expansion 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 final 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**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- (b) Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, 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 Commercial Operation 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 and not previously refunded by Buyer.

2. Commercial Operation of the Facility Expansion. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

- (a) Seller shall cause Commercial Operation for the Facility Expansion to occur by 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.

- (b) Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

- 3. **Termination for Failure to Achieve Commercial Operation.** If the Facility Expansion has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
- 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, except to the extent such delays run concurrently:
 - (a) Seller has not acquired the Material Permits by the Guaranteed 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 as identified in the Interconnection Agreement are not complete and ready for the Facility Expansion to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, 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.

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 [REDACTED] days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED] days. 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 one hundred percent (100%) of the Guaranteed Capacity, 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 sufficient to satisfy the obligation to deliver the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit H hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity 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. 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
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. 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 fifteen percent (115%) of the Expected Energy for such Contract Year:

(i) For each MWh of Facility Energy in each Settlement Interval, the difference of (A) the Renewable Rate, minus (B) the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Interval; *provided*, (x) if the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Interval is less than the Negative LMP Strike Price, then such Day-Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Section 3.3(a)(i), and (y) if the result of the difference of (A) minus (B) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice); *provided further*, Buyer shall have the right, upon providing thirty (30) days' Notice to Seller, elect to have the Parties pay their respective payment in full, and not to net such amounts as set forth above in this subsection (b); and

(ii) For each MWh of Deemed Delivered Energy in each Settlement Interval, the difference of (A) the Renewable Rate, minus (B) any associated CAISO Revenues.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of Facility Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Facility Energy in excess of the product of (a) the Guaranteed Capacity times (b) the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(e) Tax Credits. The Parties agree that the Renewable Rate is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product,

shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

(f) Setting of Renewable Rate. No later than the date on which Seller files its tax return for the calendar year in which the Commercial Operation Date occurs, Seller shall deliver to Buyer an officer's certificate stating the Tax Credit and applicable rate which Seller asserts has or will apply to the Facility and/or Facility Energy. To the extent that the Tax Credit identified in the certificate results in a reduction of the Renewable Rate as specified in the definition of "Renewable Rate," Seller shall make a payment to Buyer within sixty (60) days of such officer's certificate to reflect the reduced Renewable Rate as if it were in place as of the Commercial Operation Date.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for both the delivery and the receipt of Test Energy associated with the Facility Expansion and the Product at the Delivery Point, and bid the Facility Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. 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. The Facility Energy will be Scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) for Buyer's account.

(b) CAISO Market Participation. During the Delivery Term, Seller, 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 respect to Facility Energy. Seller's bids into the Day-Ahead Market and the Real-Time Market shall be for the forecasted amount of Facility Energy consistent with Prudent Operating Practice and at or below the Negative LMP Strike Price.

(c) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO Costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO Revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO tariff) are the responsibility of 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 Seller's responsibility.

(d) 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.

(e) Customer Market Results Interface Access. Seller and Buyer shall work together to arrange for Buyer to have read-only access to Seller's (or its SC's) customer market results interface for the Facility while ensuring that Seller remains in compliance with confidentiality obligations owed to other parties and market rules.

(f) CAISO Settlements. Seller (as the Facility's Scheduling Coordinator) shall be responsible for all settlement functions with the CAISO related to the Facility.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility Expansion description.
3. Site plan of the Facility Expansion.
4. Description of any material planned changes to the Facility Expansion 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 (including Material 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 Expansion, 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-1

MONTHLY EXPECTED AVAILABLE FACILITY CAPACITY

[MW Per Hour] – [*Insert Month*]

| | 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 | | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | | |

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 F-2

MONTHLY EXPECTED FACILITY ENERGY

[MWh Per Hour] – [*Insert Month*]

| | 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 | | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | | |

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:

$$[(A - B) * (C - D)] - (E + F)$$

where:

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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by 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 Renewable Rate, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C – D)

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

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a) $(A - B)$, (b) $(C - D)$, or (c) $[(A - B) * (C - D)] - (E + F)$, yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall 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*, 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 Renewable Power Purchase 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 Expansion is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. The installed capacity of the Facility Expansion is __ MW AC (“**Installed Capacity**”).
3. The Installed Capacity is not less than ninety-five percent (95%) of the Guaranteed Capacity.
4. Authorization to parallel the Facility Expansion 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]_____.
7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

RESERVED

Exhibit I-1

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") 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 Renewable Power Purchase 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 Expansion 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 of the Agreement).

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. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase 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. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, 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 Certificate.

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. [XXXXXXXX]. 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, 801 S Grand, Suite 400, Los Angeles, CA 90017. 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 representative 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 Renewable Power Purchase 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 ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [_____] by and among [PPA Seller], a [_____] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[**NOTE: Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.

- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
 - (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
 - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
 - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

Email: _____

4. Miscellaneous. Sections [Severability], [Counterparts], [Amendments] and [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:
Name:
Title:

By:
Name:
Title:

FINANCING PARTY

By:
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [_____] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [_____] and extending until [_____] provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA¹

Assigned Product: [Describe and define]

Further Information: [Include, if any]²

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

¹ The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA.

² To include transfer and settlement mechanics for RECs, as applicable.

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) 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 Renewable Power Purchase 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 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| 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 | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|---|---|
| <p><i>[SELLER'S NAME]</i> ("Seller")</p> | <p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer")</p> |
| <p>All Notices:</p> <p>Street: 609 Main St., 25th Floor City: Houston, TX 77002 Attn: Dawn Owens, Head of Development Phone: 925-783-3960 Facsimile: Email: dawn@fervoenergy.com</p> | <p>All Notices:</p> <p>Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Chief Executive Officer</p> <p>Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org</p> <p>Email CC: energycontracts@cleanpoweralliance.org</p> |
| <p>Reference Numbers:</p> <p>Duns: 08-077-1259 Federal Tax ID Number: 82-3168838</p> | <p>Reference Numbers:</p> <p>Duns: Federal Tax ID Number:</p> |
| <p>Invoices:</p> <p>Attn: Cybil Varghese, Supply Chain Phone: 832-758-5500 Facsimile: E-mail: accountspayable@fervoenergy.com</p> | <p>Invoices:</p> <p>Attn: Vice President, Power Supply Phone: (213) 269-5870 Email: settlements@cleanpoweralliance.org</p> |
| <p>Scheduling:</p> <p>Attn: Dawn Owens, Head of Development Phone: 925-783-3960 Facsimile: Email: dawn@fervoenergy.com</p> | <p>Scheduling: TBD</p> <p>Attn: Operations 24/7 Desk Phone: (817) 462-1509 Email: TenaskaComm@tnsk.com</p> |
| <p>Confirmations:</p> <p>Attn: Dawn Owens, Head of Development Phone: 925-783-3960 Facsimile: Email: dawn@fervoenergy.com</p> | <p>Confirmations:</p> <p>Attn: Vice President, Power Supply Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org</p> <p>Email CC: energycontracts@cleanpoweralliance.org</p> |
| <p>Payments:</p> <p>Attn: David Ulrey, CFO Phone: 206-557-9828 Facsimile: E-mail: david.ulrey@fervoenergy.com</p> | <p>Payments:</p> <p>Attn: Vice President, Power Supply Phone: (213) 269-5870 Email: settlements@cleanpoweralliance.org</p> |
| <p>Wire Transfer:</p> <p>BNK: First Republic 2100 El Camino Rd</p> | <p>Wire Transfer:</p> <p>BNK: River City Bank ABA: 121-133-416</p> |

| | |
|---|---|
| <i>[SELLER'S NAME]</i> ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| Palo Alto, CA 94306 ABA: 321081669 ACCT:*****3219 | ACCT: XXXXXX8042 |

EXHIBIT O

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (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 Renewable Power Purchase 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 (the “Project”) 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 CPA is authorized to act in accordance with Collateral Agent's instructions, and that 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 sixty (60) 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*, (a) if possession of the Project 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 (such notice, a "Financing Document Default Notice") CPA 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 has financial qualifications and operating experience *[TBD]* (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 Project (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 Project 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 Project 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 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 Project; *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 Project 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.

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 *[Legal Status of Seller]* 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.

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.

| | |
|---|--|
| <p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p> | <p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p> |
| <p>By: _____ — <i>[Name]</i> <i>[Title]</i> Date: _____</p> | <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p> |
| | |
| <p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p> | |

Exhibit O - 13

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT P

CPM Adjustment Factors

| Month | Multiplier |
|-----------|------------|
| January | 50% |
| February | 50% |
| March | 50% |
| April | 50% |
| May | 100% |
| June | 100% |
| July | 250% |
| August | 250% |
| September | 250% |
| October | 100% |
| November | 50% |
| December | 50% |

Exhibit P - 1

EXHIBIT Q

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. **Freely Chosen Employment**

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. **Young Workers**

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student

workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

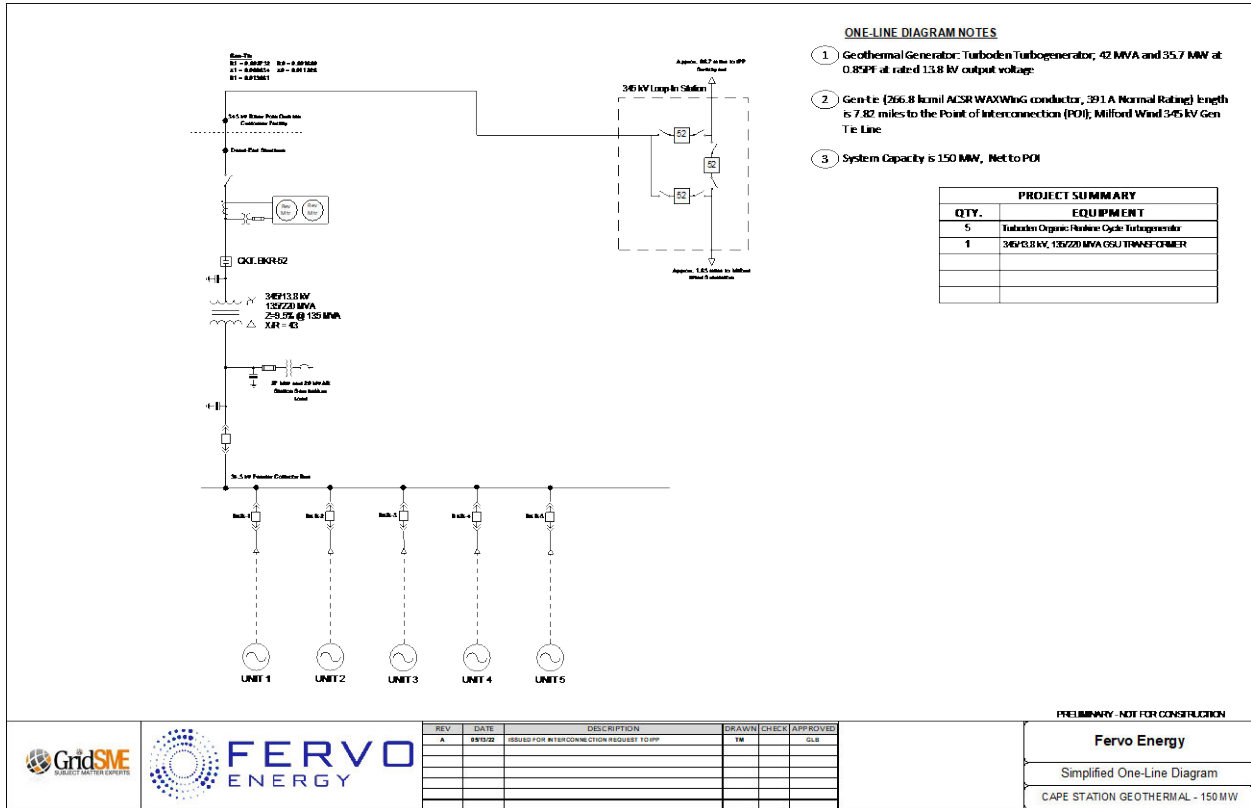
In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

8. Restricted Jurisdictions

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

EXHIBIT R

METERING DIAGRAM



| REV | DATE | DESCRIPTION | DRAWN | CHECK | APPROVED |
|-----|----------|---|-------|-------|----------|
| A | 09/10/22 | ISSUED FOR INTERCONNECTION REQUEST TO IEP | TW | | GLR |
| | | | | | |
| | | | | | |
| | | | | | |

PRELIMINARY - NOT FOR CONSTRUCTION

Fervo Energy

Simplified One-Line Diagram

CAPE STATION GEOTHERMAL - 150 MW

EXHIBIT S
MATERIAL PERMITS

| <i>No.</i> | <i>Permits</i> |
|------------|----------------|
| 1 | |
| 2 | |



Management Report

To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Chief Executive Officer
Subject: Management Report
Date: September 1, 2022

Inflation Reduction Act – Impact and Opportunities for CPA

On August 16, President Joe Biden signed the Inflation Reduction Act of 2022 (IRA) into law. The comprehensive legislation has been touted by many as the most significant action that the federal government has taken to fight climate change. CPA joined a coalition of CCAs to support this bill, following CPA's Board-approved alternate protocol to take positions on urgent legislative matters that do not allow time for the traditional committee process.

The IRA will provide approximately \$396 billion to invest in clean energy technology, jobs, and manufacturing, through a combination of tax credits and incentives, tax code changes, and direct spending. Among these are an extension of the investment tax credit (ITC) and production tax credit (PTC) for renewable energy, as well as the addition of an ITC for stand-alone energy storage. Previously, storage had to be paired with a clean energy generation source to qualify for the tax credit. The extension and expansion of the ITC to include stand-alone energy storage were priorities that CPA had advocated for over the past 18 months.

There are also new bonus tax credits available for projects located in low-income or energy-transition communities and for those projects that include high levels of domestic content, both of which are CPA priorities. Overall, these tax credit provisions could lead to lower renewable energy procurement costs in the medium and long term, though they are unlikely to mitigate the near-term upward cost pressures the industry is facing due to

U.S. trade actions, COVID-19 supply chain disruptions, and the Russian invasion of Ukraine.

The changes to the tax code also present opportunities for CPA to accelerate its vehicle and building electrification programs, and to consider new ownership models for its renewable energy resources.

New Battery Energy Storage Assets Online

Over the summer, CPA brought online two new battery energy storage projects totaling 232 MW, enhancing grid reliability, and ensuring high levels of renewable energy are available to our customers when they need it most.

The 100 MW Luna Battery Storage Project, located in the City of Lancaster, is a stand-alone storage project and was developed by AES Corporation. Luna is the third stand-alone storage project in CPA's portfolio, joining Johanna ESS Energy Storage in Santa Ana and Edwards Sanborn Storage II in Kern County.

Arlington Energy Center II Storage is a 132 MW battery located in Riverside County and is paired with 100 MW of solar that CPA has under contract and operational at the same site. In 2023, an additional 40 MW of solar will be added to the site, which has been developed by NextEra Energy.

CPA staff and our developer partners worked diligently over the past few months to ensure that these facilities were brought online in time to contribute to 2022 summer reliability and reduce the potential of grid instability during sustained high-temperature weather events, as California has experienced in recent years. When fully discharging, these two projects can provide enough energy to power over 150,000 Southern California homes for four hours.

End of CARE/FERA/Medical Baseline Rate Freeze

In response to the COVID-19 pandemic and rising electricity costs, rates for CPA's CARE, FERA, and Medical Baseline (C/F/M) customers, who comprise almost 30% of all residential customers, were frozen in May of 2020. In June of this year, the Board voted

to lift the freeze beginning October 1, 2022. CPA estimates that this more than two-year rate freeze will have amounted to an internal COVID-related subsidy for low-income customers of over \$10 million.

Bill increases for C/F/M customers from the lifting of the rate freeze will be significant, though the initial impact will be mitigated by the shift in October from higher summer rates to lower winter rates and generally lower usage in the fall. To prepare customers for the change and to sustain the messaging over time, CPA electricity bills now include messages about the upcoming end of the C/F/M rate freeze and will direct customers to a [dedicated financial assistance page on CPA's website](#). The webpage provides information on CPA's past and ongoing commitment to help low-income customers, and other options available for reducing monthly bills. The bill messages will appear through at least the end of the calendar year.

Power Share Program Nearing Enrollment Cap

CPA's Power Share program, which provides low-income residents living in disadvantaged communities with a 20% bill discount and 100% clean energy, is nearing its enrollment cap of about 6,200 customers with almost 5,800 customers now enrolled. Once at full enrollment, a waitlist will be used to track customer enrollment. As customers unenroll or fall out of the program due to eligibility, waitlisted customers will be enrolled, assuming they still meet eligibility requirements.

As a final enrollment push, CPA will send out another mailer to eligible customers in areas with low enrollment penetration, email all eligible customers, and utilize community-based organizations for enrollment support on the ground. Specific marketing efforts will ramp down once enrollment is reached, but CPA will still include the program in overall customer communications to maintain a robust waitlist, as approximately 60 customers per month leave the program due to moving out of the service territory, changes in income status, or other reasons.

Member Agency Reporting of Renewable Energy Levels to the EPA

EPA's Green Power Partnership recognizes public and private entities as well as communities for their renewable energy use. CPA will be reaching out to staff at our 100% Green and Clean default communities over the next two months to facilitate member agency applications to the program for both their municipal facilities and for their communities as a whole. CPA staff will draft the applications and supply the necessary usage data so that a minimum of member agency staff time will be required.

We anticipate that CPA member agencies individually and collectively will be well-represented among the top tier of communities in the nation. Once the application process is complete and cities are recognized by the EPA as Green Power Partners, CPA will work with member agencies to promote their participation in the program and the impact of their commitment to renewable energy.

Monthly Financial Performance

CPA is in the process of closing its full Fiscal Year 2021/22 financial results and undergoing its annual independent audit. The Finance Committee will receive full year FY 2021/22 financial results and the auditor report in October, followed by the full Board in November. The most recent monthly financial information available is for May 2022, where CPA recorded operating income of \$6.8 million, \$4.5 million less than budgeted, reflecting both lower energy use and higher than expected energy market prices. For the year to date through May, CPA recorded operating income of \$39 million, \$33.5 million more than budgeted. The financial dashboard for May is provided in Attachment 1.

Customer Participation Rate and Opt Actions

As of August 22, 2022, CPA's overall participation rate was 96%, unchanged from the past four months. CPA had a total of 1,002,798 active customers, up 2,662 customers from the previous month. Opt-out levels – 354 accounts through the third week of August – are lower than what CPA typically experiences in the third quarter of the year. New accounts ("move-ins") were lower than closed accounts ("move-outs") by 744 customers in August. Attachment 2 provides participation rates and active accounts by jurisdiction.

Customer Service Center Performance

Incoming calls to CPA's Customer Service Center were seasonally low at 1,919 calls through August 22, likely reflecting moderate weather and therefore normal bill amounts. In June, 97% of calls were answered within 45 seconds and average wait time was 8 seconds, up from 4 seconds in July.

Contracts Executed Under the Chief Executive Officer's Authority

A list of non-energy contracts executed under the CEO's signing authority is provided in Attachment 3. The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

ATTACHMENTS

1. Monthly Financial Dashboard
2. Overall Participation Rates by Jurisdiction
3. Non-Energy Contracts Executed under CEO's Authority

Financial Dashboard

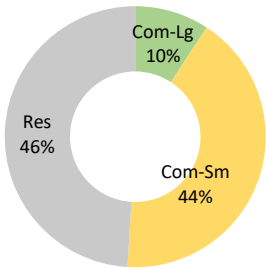
YTD
May
2022

Active Accounts
1,000,828

Participation Rate
95.95%

YTD Sales Volume
10,391 GWh

May Sales Volume
871 GWh



Summary of Financial Results

| in \$000,000's | May | | | | Year-to-Date | | | |
|--------------------|--------|--------|----------|------|--------------|--------|----------|------|
| | Actual | Budget | Variance | % | Actual | Budget | Variance | % |
| Energy Revenues | 61.4 | 63.3 | -1.9 | -3% | 772.2 | 810.2 | -38.0 | -5% |
| Cost of Energy | 52.0 | 49.3 | 2.8 | 6% | 707.7 | 774.9 | -67.2 | -9% |
| Net Energy Revenue | 9.3 | 14.0 | -4.6 | -33% | 64.5 | 35.3 | 29.2 | 83% |
| Operating Expenses | 2.5 | 2.6 | -0.1 | -4% | 25.5 | 29.8 | -4.3 | -14% |
| Operating Income | 6.8 | 11.4 | -4.5 | -40% | 39.0 | 5.6 | 33.5 | 603% |

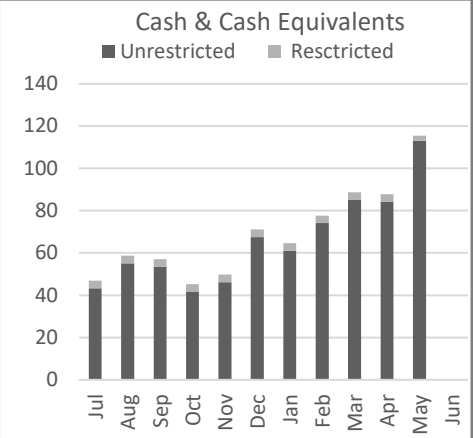
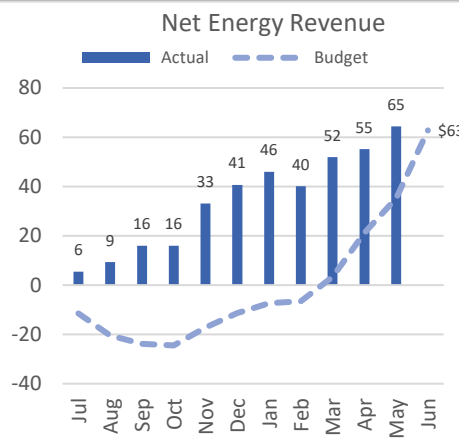
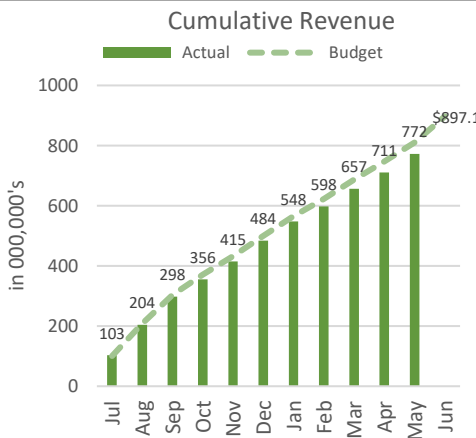
Note: Numbers may not sum up due to rounding.

CPA recorded operating income of \$6.8 million in May 2022 which was \$4.5 million less than the budgeted operating income of \$11.4 million. For the year to date, CPA recorded operating income of \$39 million, \$33.5 million more than the budgeted, year-to-date operating income of \$5.6 million.

Revenue was \$1.9 million or 3% lower than budgeted in May primarily as a result of cooler than normal temperatures in CPA's service area and lower electricity use by CPA customers. The cost of energy was \$2.8 million or 6% higher than budget primarily as a result of higher energy market prices arising from ongoing events in the Ukraine and drought conditions in the west which have reduced hydroelectric production. For the year to date, operating costs were lower than budget primarily because of lower staffing costs resulting from delayed hiring and staff turnover, the performance of services later in the year than budgeted, and the non-utilization of contingencies.

As of May 31, 2022, CPA had \$113 million in unrestricted cash and cash equivalents, and \$79.853 million available on its bank line of credit. CPA had a \$20 million loan outstanding as of May 31, 2022 due to the County of Los Angeles. The loan due to the County of Los Angeles was repaid in June 2022 as agreed.

CPA is in sound financial health and compliance with its bank and other credit covenants.



Definitions:

Accounts: Active Accounts represent customer accounts of active customers served by CPA per Calpine Invoice.

Participation Rate %: Participation Rate represent active accounts 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 expenses: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations

Net operating income, also known as earnings before interest, depreciation and amortization (EBIDA), represents the difference between revenues and expenditures before depreciation expense, interest income and expense, and capital expenditures

Cash and Cash Equivalents: Includes cash held as bank deposits.

Year to date (YTD): Represents the fiscal period beginning July 1, 2021

Participation by City and County

| Jurisdiction | Default Option | Active Accounts | Participation Rate | Lean % | Clean % | 100% Green % |
|-----------------------|----------------|------------------|--------------------|--------|---------|--------------|
| Agoura Hills | 100% Green | 8,128 | 93.91% | 1.85% | 0.36% | 97.80% |
| Alhambra | Clean | 34,001 | 98.35% | 1.48% | 98.09% | 0.44% |
| Arcadia | Lean | 22,502 | 98.29% | 99.77% | 0.10% | 0.13% |
| Beverly Hills | Clean | 18,667 | 99.83% | 1.62% | 98.22% | 0.17% |
| Calabasas | 100% Green | 9,747 | 97.80% | 1.49% | 0.30% | 98.21% |
| Camarillo | Lean | 28,447 | 96.15% | 99.14% | 0.26% | 0.61% |
| Carson | Clean | 29,245 | 97.80% | 1.26% | 97.44% | 1.30% |
| Claremont | Clean | 12,632 | 95.37% | 2.26% | 97.03% | 0.71% |
| Culver City | 100% Green | 19,216 | 98.17% | 3.95% | 1.09% | 94.96% |
| Downey | Clean | 36,733 | 97.77% | 1.49% | 98.05% | 0.46% |
| Hawaiian Gardens | Clean | 3,620 | 96.66% | 1.19% | 97.68% | 1.13% |
| Hawthorne | Lean | 28,492 | 99.62% | 98.40% | 0.44% | 1.16% |
| Los Angeles County | Clean | 298,028 | 96.04% | 1.74% | 97.28% | 0.97% |
| Malibu | 100% Green | 6,959 | 97.74% | 2.87% | 0.46% | 96.67% |
| Manhattan Beach | 100% Green | 15,479 | 98.60% | 2.53% | 0.18% | 97.29% |
| Moorpark | Clean | 11,456 | 90.49% | 3.02% | 96.40% | 0.58% |
| Ojai | 100% Green | 3,504 | 93.39% | 5.91% | 1.26% | 92.84% |
| Oxnard | 100% Green | 55,606 | 96.17% | 3.98% | 0.53% | 95.50% |
| Paramount | Lean | 15,614 | 98.91% | 97.08% | 1.16% | 1.76% |
| Redondo Beach | Clean | 33,298 | 99.50% | 1.85% | 97.74% | 0.41% |
| Rolling Hills Estates | 100% Green | 3,462 | 94.51% | 7.11% | 14.82% | 78.08% |
| Santa Monica | 100% Green | 54,070 | 99.60% | 3.49% | 0.69% | 95.82% |
| Sierra Madre | 100% Green | 4,977 | 94.85% | 5.30% | 1.57% | 93.13% |
| Simi Valley | Lean | 43,275 | 93.70% | 99.67% | 0.12% | 0.21% |
| South Pasadena | 100% Green | 11,651 | 98.61% | 3.73% | 10.86% | 85.41% |
| Temple City | Lean | 12,579 | 97.78% | 99.80% | 0.06% | 0.14% |
| Thousand Oaks | 100% Green | 44,226 | 90.08% | 8.03% | 1.65% | 90.32% |
| Ventura | 100% Green | 43,707 | 94.93% | 4.80% | 1.29% | 93.90% |
| Ventura County | 100% Green | 32,317 | 86.69% | 6.50% | 1.22% | 92.28% |
| West Hollywood | 100% Green | 26,447 | 97.55% | 2.36% | 0.37% | 97.27% |
| Westlake Village | Lean | 3,720 | 88.76% | 99.57% | 0.05% | 0.38% |
| Whittier | Clean | 31,010 | 96.05% | 1.83% | 97.75% | 0.42% |
| Total | | 1,002,815 | 96.05% | | | |

Overall Participation by Default Option

| Default Option | Participation Rate | Default Option | Active Accounts | % of Active |
|----------------|--------------------|----------------|------------------|----------------|
| 100% Green | 95.51% | 100% Green | 339,496 | 33.85% |
| Clean | 96.79% | Clean | 508,690 | 50.73% |
| Lean | 96.17% | Lean | 154,629 | 15.42% |
| Total | 96.05% | Total | 1,002,815 | 100.00% |

Clean Power Alliance

Non-energy contracts executed under Chief Executive Officer authority Rolling 12 months -- Open contracts shown in Bold

| Vendor | Purpose | Month | NTE Amount | Status | Notes |
|----------------------------|--|---------------|------------|-----------|---|
| Salesforce | Stakeholder Relationship Management application subscription | August 2022 | \$15,300 | Active | |
| Elite Edge Consulting | Accounting services | August 2022 | \$90,000 | Active | Original Contract Date: September 2020 NTE \$112,000 Amendment #1 - NTE for renewals increased to \$120,000 in September 2020 Amendment #2 - First renewal authorized July 2021 - Extends through 6/30/2022 Amendment #3 - Second (final) renewal authorized; extends through 6/30/2022 |
| Oscar Associates | Recruiting Services | August 2022 | N/A | Active | Amendment to reduce placement fees to 25% of starting salary of exclusively referred candidate |
| Helpmates | Temporary staffing services | July 2022 | N/A | Active | |
| Baker Tilly | Financial audit services | June 2022 | \$50,000 | Active | |
| IHS Market | Subscription for CAISO forecasts | June 2022 | \$15,000 | Active | |
| MBI | Marketing contract renewal | June 2022 | \$7,687 | Active | 3% increase to Board approved NTE upon renewal |
| Fraser | Marketing contract renewal | June 2022 | \$55,647 | Active | 9% increase to Board approved NTE upon renewal |
| John Kotch | IT Consulting | June 2022 | \$3,000 | Completed | |
| AiQueous | Salesforce implementation | June 2022 | \$10,000 | Active | |
| Place and Page | Graphic design and branding | June 2022 | \$50,000 | Active | |
| Informal Development | Website development | May 2022 | \$50,000 | Active | |
| Lattice | Performance management software | April 2022 | \$9,000 | Active | |
| Active San Gabriel Valley | Grant for community-based outreach | April 2022 | \$8,000 | Completed | |
| MERITO | Grant for community-based outreach | April 2022 | \$8,000 | Completed | |
| Davis Wright Tremaine | Legal services (regulatory) | March 2022 | \$125,000 | Active | |
| LinkedIn | Subscription for recruiting tools | March 2022 | \$34,306 | Active | |
| MCM | Municipal advisory services | March 2022 | \$125,000 | Active | |
| Pinnacle | AV maintenance/service plan | March 2022 | \$25,273 | Active | |
| Gridwell | Resource adequacy training | February 2022 | \$2,000 | Completed | |
| Abbot, Stringham and Lynch | IT compliance reporting for CPUC | February 2022 | \$8,500 | Active | |
| California Science Center | Event space rental for Staff Retreat | February 2022 | \$6,440 | Completed | |
| Orange Grove Consulting | DEI implementation planning services | February 2022 | \$105,750 | Completed | |
| Zoe Misquez | Filing lobbying compliance forms | January 2022 | \$500 | Active | |
| Critical Mention, Inc. | Media monitoring service | January 2022 | \$6,000 | Active | |

Clean Power Alliance

**Non-energy contracts executed under Chief Executive Officer authority
Rolling 12 months -- Open contracts shown in Bold**

| Vendor | Purpose | Month | NTE Amount | Status | Notes |
|--|---|----------------|------------|-----------|--|
| Clear Language Company | Minute transcription for board meetings | January 2022 | \$0 | | Original Contract Date: November 2021 NTE \$20,000 Amendment 1 - \$0, to clarify fee structure |
| PR Web/Cision | Media/PR wire distribution services | January 2022 | \$3,060 | Active | |
| Ironclad | Contract lifecycle management platform | January 2022 | \$22,000 | Active | |
| Langan | GIS services/web browser tool | December 2021 | \$8,000 | Active | Original Contract Date: October 2020 NTE \$120,000 Amendment 1 - NTE increased to \$128,000 First Renewal Term extends through 10/20/2022 |
| Maria Shafer | Minute transcription for board meetings | November 2021 | \$20,000 | Completed | |
| Clear Language Company | Minute transcription for board meetings | November 2021 | \$20,000 | Active | |
| Omni Government Relations & Pinnacle Advocacy, LLC | Lobbying Services | November 2021 | \$125,000 | Active | Original Contract Date: December 2019 NTE \$108,000 Amendment #1 - first renewal term authorized November 2020, NTE \$108,000 Amendment #2 - second (final) renewal authorized, extends through December 5, 2022, new NTE \$125,000 |
| MK Partners | Integration services for Salesforce SW | October 2021 | \$7,995 | Closed | Contract termination |
| Sigma Computing, Inc. | Business intelligence & analytics software tool | October 2021 | \$10,000 | Active | |
| MRW & Associates | Extension of ratemaking services contract | October 2021 | \$35,000 | Active | Original Contract Date: December 2020 NTE \$90,000 Amendment #1 - NTE increased to \$125,000 Extends through 12/2/2022 (renewals authorized) |
| Ross Associates | Consulting services for leadership training | October 2021 | \$50,000 | Completed | |
| Clean Energy Counsel LLP | Extension of legal services agreement | September 2021 | \$30,000 | Active | Original Contract Date: November 2020 NTE \$355,000 Amendment #1 - NTE increased to \$385,000 in July 2021 Extends through 11/6/2021 (renewals authorized) |

Clean Power Alliance

**Non-energy contracts executed under Chief Executive Officer authority
Rolling 12 months -- Open contracts shown in Bold**

| Vendor | Purpose | Month | NTE Amount | Status | Notes |
|----------------------------------|---|----------------|------------|--------|---|
| CV Resources | Recruiting Services | September 2021 | N/A | Active | 20% of starting salary upon hiring an exclusively referred candidate |
| Abbot, Stringham and Lynch | 2020 CEC Power Source Disclosure Audit | August 2021 | \$16,700 | Active | Includes two optional renewals for years 2021 and 2022 |
| Bradsby Group | Recruiting Services | August 2021 | N/A | Active | 25% of starting salary upon hiring an exclusively referred candidate |
| Chapman & Cutler, LLP | 2021 Legal Services (CPA's Credit Agreement) | August 2021 | \$35,000 | Active | Original Contract Date: 3/1/21 NTE \$20,000 Amendment #1 - NTE increased to \$55,000 Extends through 4/30/22, auto-renew |
| Polsinelli, LLP | Legal Service Agreement (Employment, Compliance, General Legal Support related to Commercial Liability, Risk, and Mitigation issues) | April 2021 | \$75,000 | Active | Amendment #2 to original Agreement executed on March 8, 2019 |
| AccuWeather Enterprise Solutions | Professional Forecasting Weather Services | April 2021 | \$4,800 | Active | Addendum to April 2020 Agreement. Extended through March 2023 at \$400/mo |
| Shute, Mihaly & Weinberger, LLP | Legal Service Agreement (Regulatory, Administrative, Environmental, Energy Procurement, Public Contracting, Public Entity Governance Laws, Issues and/or Proceedings) | April 2021 | \$65,000 | Active | |
| OpenPath | New Office Keycard Access Control System | January 2021 | \$1,500 | Active | |
| Prime Government Solutions, Inc. | Board and committee meeting agenda management software | December 2020 | \$16,000 | Active | |
| ProComply, Inc. | Energy regulation compliance training | October 2020 | \$5,000 | Active | |
| Crown Castle Fiber LLC | New Office Dedicated Internet Access Service | September 2020 | \$ 18,600 | Active | |
| NextLevel Internet, Inc. | New Office High Speed Internet Service | September 2020 | \$ 6,936 | Active | |
| Windstream Services, LLC | New Office Telephone Service | September 2020 | \$ 14,095 | Active | |
| Zero Outages | New Office Security, Firewall, & Wi-Fi Service | September 2020 | \$ 7,608 | Active | |

Clean Power Alliance

Non-energy contracts executed under Chief Executive Officer authority
Rolling 12 months -- Open contracts shown in Bold

| Vendor | Purpose | Month | NTE Amount | Status | Notes |
|--------------------------------|--|------------|------------|--------|-------|
| Burke, Williams, Sorenson, LLP | Legal Services Agreement (Brown Act, public entity governance issues and other legal services) | July 2020 | \$ 100,000 | Active | |
| Hall Energy Law PC | Energy Procurement Counsel | July 2020 | \$ 125,000 | Active | |
| Adobe Inc. | AdobeSign Secure Electronic Signature Service | June 2020 | \$ 3,200 | Active | |
| Snowflake Inc. | Cloud-Native Elastic Data Warehouse Service | April 2020 | \$ 36,000 | Active | |



Commonly Used Acronyms

| | |
|---------|--|
| BESS | Battery Energy Storage System |
| CAC | Community Advisory Committee |
| CAISO | California Independent System Operator |
| CALCCA | California Community Choice Association |
| CalEVIP | California Electric Vehicle Incentive Program |
| CARB | California Air Resources Board |
| CARE | California Alternate Rates for Energy (Low Income Discount Rate) |
| CCA | Community Choice Aggregation |
| CEC | California Energy Commission |
| CPUC | California Public Utilities Commission |
| DA | Direct Access (Private Retail Energy Supplier) |
| DAC | Disadvantaged Community (As Defined by Calenviroscreen 3.0) |
| DER | Distributed Energy Resources |
| DR | Demand Response |
| ERMP | Energy Risk Management Policy |
| ERRA | Energy Resource Recovery Account (SCE Generation Rate Setting) |
| ESA | Energy Storage Agreement |
| EVSE | Electric Vehicle Supply Equipment (EV Charger) |
| FERA | Family Electric Rate Assistance (Low Income Discount Rate) |
| GHG | Greenhouse Gas |
| IOU | Investor Owned Utility |
| IRP | Integrated Resource Plan |
| JPA | Joint Powers Authority |



Commonly Used Acronyms

| | |
|------|--|
| Kwh | Kilowatt-Hour (A Measure of Energy Used in A One-Hour Period) |
| Kw | Kilowatt = 1,000 Watts (Watt = A Measure of Instantaneous Power) |
| LSE | Load Serving Entity |
| MB | Medical Baseline (Discount Rate for Medical Equipment Needs) |
| MW | Megawatt = 1,000 Kilowatts |
| Mwh | Megawatt-Hour = 1,000 Kilowatt-Hours |
| NEM | Net Energy Metering (Usually for Customers with Solar) |
| OAT | Other Applicable Tariffs |
| PCIA | Power Charge Indifference Adjustment (Can Be Called "Exit Fee") |
| PCC1 | Renewable Energy Generated Inside California |
| PCC2 | Renewable Energy Generated Outside California |
| PCC3 | A REC from A Renewable Resource, Delivered Without Energy |
| PCL | Power Content Label |
| POU | Publicly Owned or Municipal Utility |
| PPA | Power Purchase Agreement |
| PSPS | Public Safety Power Shutoff |
| PV | Photovoltaic (Solar) Panels |
| RA | Resource Adequacy |
| REC | Renewable Energy Credit |
| RPS | Renewables Portfolio Standard |
| T&D | Transmission and Distribution |
| TOU | Time Of Use (Used to Refer to Rates that Differ by Time Of Day) |
| WECC | Western Electricity Coordinating Council |