VALLEY CLEAN ENERGY

**Special Meeting of the Valley Clean Energy Alliance**
**Board of Directors**
**Thursday, May 14, 2020 at 4:00 p.m.**
**Via Teleconference Call**

**Pursuant to the Provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing, all members of the Board of Directors and all staff will attend this meeting telephonically. Any interested member of the public who wishes to listen in should join this meeting via teleconferencing as set forth below.**

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

**Members of the public who wish to listen to the Board of Director's meeting may do so with the teleconferencing call-in number and meeting ID code. Teleconference information below to join meeting:**

**Join meeting via Zoom:**

a. **From a PC, Mac, iPad, iPhone, or Android device with high-speed internet. (If your device does not have audio, please also join by phone.)**
[https://us02web.zoom.us/j/83375217256](https://us02web.zoom.us/j/83375217256)

**Meeting ID: 833 7521 7256**

b. **By phone**
One tap mobile
**+16699009128,,83375217256# US**
**+12532158782,,83375217256# US**

Dial:
+1 669 900 9128 US
+1 253 215 8782 US
+1 346 248 7799 US
+1 646 558 8656 US
+1 301 715 8592 US
+1 312 626 6799 US
**Meeting ID: 833 7521 7256**

**Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.**

**Board Members:** Don Saylor (Chair/Yolo County), Dan Carson (Vice Chair/City of Davis), Tom Stallard (City of Woodland), Gary Sandy (Yolo County), Lucas Frerichs (City of Davis), Angel Barajas (City of Woodland), Wade Cowan (City of Winters), and Jesse Loren (City of Winters)

**Associate Members:** Christopher Cabaldon (City of West Sacramento), Beverly Sandeen (City of West Sacramento)

**4:00 p.m. Call to Order**

1. **Welcome**
2. **Approval of Agenda**
3. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

**CONSENT AGENDA**

4. **Approve April 9, 2020 Board meeting Minutes.**
5. **Receive 2020 Long Range Calendar.**
6. **Receive Financial Update – March 31, 2020 (unaudited) financial statement.**
7. **Receive May 6, 2020 Regulatory Update provided by Keyes & Fox.**
8. **Receive Legislative update**
9. **Receive May 6, 2020 Customer Enrollment update.**
10. **Receive Community Advisory Committee April 23, 2020 meeting summary.**
11. **Approve Power Purchase Agreement between Valley Clean Energy and the Yolo County Flood Control & Water Conservation District (YCFCWCD) for the output of approximately 3 MW from the Indian Valley hydro facility.**
12. **Amendment #16 to Task Order 2 of the Sacramento Municipal Utility District Professional Services Agreement for technology configuration of VCE's billing system to enable vintage year Power Charge Indifference Adjustment rates.**

**REGULAR AGENDA**

13. **Approve Power Purchase Agreement between Valley Clean Energy and Rugged Solar LLC for the procurement of energy from a new 72 megawatt solar photovoltaic project located in San Diego County, California. (Action)**
14. **Update on Pacific Gas & Electric Commercial and Agriculture rates (TOU rates) with early adoption available. (Informational)**

15. **Receive analysis of Pacific Gas & Electric's offer to allocate Greenhouse gas (GHG)-free attributes to Community Choice Aggregators; and, approve recommendation to accept large hydro attributes only and decline nuclear resource attributes. (Action)**
16. **Update on Fiscal Year 2020-2021 preliminary Operating Budget, Load Forecast, and Potential Policy Options to address possible future fiscal impacts related to COVID-19 and State regulatory actions. (Informational)**
17. **Status update and next steps on the potential acquisition of PG&E's local electricity distribution system. (Informational)**
18. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.

## CLOSED SESSION

**Public comment on the closed session items only will be read at this time.**

**17. A. VCE Board including Associate Board Members: Conference with Legal Counsel – Existing Litigation (Paragraph (1) of subdivision (d) of Section 54956.9)**

Name of Cases:

(1) In re PG&E Corporation, Debtor; Chapter 11; US Bankruptcy Court, Northern District of California San Francisco Division, Case No. 19-30088(DM) and Case No. 19-30089(DM)

(2) Investigation 19-09-016 related to the consideration of the Ratemaking and other Implications of a Proposed Plan for Resolution of Voluntary Cases filed by PGE pursuant to the Bankruptcy Code, before the California Public Utilities Commission.

(3) Safety Order Instituting Investigation (O.I.I.) and Rulemaking

i. O. I. I. 15-08-019 ( G&E Safety culture); Order Instituting Investigation on the Commission's Own Motion to Determine Whether Pacific Gas and Electric Company and PG&E Corporation's Organizational Culture and Governance Prioritize Safety.

ii. O. I. I. 19-06-015 (PG&E Safety Culture and Penalties for 2017 Fires); Order Instituting Investigation on the Commission's Own Motion into the Maintenance, Operations and Practices of Pacific Gas and Electric Company (U39E) with Respect to its Electric Facilities; and Order to Show Cause Why the Commission Should not Impose Penalties and/or Other Remedies for the Role PG&E's Electrical Facilities had in Igniting Fires in its Service Territory in 2017.

iii. R. 18-12-005 (PSPS Rulemaking); Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions.

**B. Public Employee Performance Evaluation (Government Code Section 54957)**
**Position Title: Interim General Manager**

**18. Adjournment: The next VCE Board meeting is scheduled for Thursday, June 11, 2020 at 5:30 p.m. currently at the City of Davis Community Chambers, located at 23 Russell Boulevard, Davis, California 95616; however, this meeting may be held via teleconference.**

**PUBLIC PARTICIPATION INSTRUCTIONS FOR UPCOMING VALLEY CLEAN ENERGY BOARD OF DIRECTORS SPECIAL MEETING ON THURSDAY, MAY 14, 2020 AT 4:00 P.M.:**

**PUBLIC PARTICIPATION**. Public participation for this meeting will be done electronically via e-mail ***and*** during the meeting as described below.

**Public participation via e-mail:** If you have anything that you wish to be distributed to the CAC and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org. If information is received by 3:00 p.m. on the day of the CAC meeting it will be e-mailed to the CAC members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting.

**Verbal public participation during the meeting:** If participating during the meeting, there are two (2) ways for the public to provide verbal comments:

1) If you are attending by computer, activate the "participants" icon at the bottom of your screen, then raise your hand (hand clap icon) under "reactions".
2) If you are attending by phone only, you will need to press *9 to raise your hand.

**VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.**

**Public Comments:** If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or notifying the host as described above. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the "Subject" line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: https://valleycleanenergy.org/board-meetings/.

**Accommodations for Persons 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 Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org .

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 4**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Alisa Lembke, Board Clerk / Administrative Analyst

**SUBJECT:** Approval of Minutes from April 9, 2020 Special Board Meeting

**DATE:** May 14, 2020

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## RECOMMENDATION

Receive, review and approve the attached Minutes from the April 9, 2020 Special Board meeting.

**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE**
**BOARD OF DIRECTORS SPECIAL MEETING**
**THURSDAY, APRIL 9, 2020**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their special meeting scheduled for Thursday, April 9, 2020 at 4:00 p.m. via teleconference. Chairperson Don Saylor established that there was a quorum present and began the meeting at 4:06 p.m.

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| Board Members Present: | Don Saylor, Dan Carson, Lucas Frerichs, Gary Sandy, Tom Stallard Wade Cowan, Jesse Loren, Angel Barajas |
| Associate Members Present: | Beverly Sandeen, Christopher Cabaldon |
| Members Absent: | None |
| Associate Members Absent: | None |

**Item 2: Approval of Agenda** — Motion made by Director Sandy to approve the April 9, 2020 agenda tabling items 13 (Rugged Power Purchase Agreement) and 17.B. (Public Employee Performance Evaluation), seconded by Director Stallard. Motion passed.

**Item 3: Public Comment** — Chairperson Saylor opened the floor for public comment. Christine Shewmaker provided verbal public comment thanking the Board for allowing verbal public comment during VCE's first telephonic meeting. There were no written public comments received.

**Items 4-11: Approval of Consent Agenda** — Motion made by Director Loren to approve the consent agenda items, seconded by Director Barajas. Motion passed. The following items were approved and/or received:

4. March 12 ,2020 Board Meeting Minutes;
5. 2020 Long Range Calendar;
6. Financial Updated – February 29, 2020 (unaudited) financial statement;
7. April 1, 2020 Regulatory update from Keyes & Fox;
8. Legislative Update;
9. April 1, 2020 Customer Update;
10. Update on Fiscal Year 2020-2021 operating Budget; and,
11. River City Bank Revolving Line of Credit Extension ratification.

There was no written or verbal public comment.

VALLEY CLEAN ENERGY

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| **Item 12: Report on VCE Adjustments to COVID-19 crisis** | VCE Interim General Manager Mitch Sears provided an update on the COVID-19 crisis and those adjustments that have been made by VCE Staff. SMUD is working, including heir Customer Service Team with some of their staff working remotely. VCE has temporarily suspended collections for past due accounts.<br><br>Director Carson asked if there have been any impacts on the load demand with so many people at home? Mr. Sears reported that the energy market is seeing across the board significant changes in energy load and in which sectors are using the energy. It is anticipated that there will be a 5-10% reduction in load over the next few months. These factors and others are being folded into VCE's budget and work that is being done with SMUD. Currently, VCE is gathering information from CalCCA and other Community Choice Aggregates (CCAs).<br><br>There was no written or verbal public comment. |
| **Item 13: PPA – Rugged Solar** | This item was tabled. Two (2) written public comments were received; however, they were not read into the record. |
| **Item 14: Approve Local / Regional Renewable Energy Request for Offers (RFO) Solicitation (Informational)** | Mr. Sears introduced this item and turned over the presentation to VCE Assistant General Manager and Director of Power Services Gordon Samuel. Mr. Samuel reminded the Board that VCE is asking the Board to approve the release of a local/regional long term renewable energy request for offers (RFO) solicitation. Once approved, Staff anticipating posting/advertising the RFO in mid-April 2020. Mr. Samuel informed those present that input has been received and incorporated into the solicitation from VCE's Community Advisory Committee (CAC), Defenders of Wildlife, Nature Conservancy, and the Board from their March meeting.<br><br>Motion made by Director Frerichs to approve the release of a local/regional long term renewable energy request for offers (RFO) solicitation, seconded by Director Stallard. There was no written or verbal public comment.<br><br>Motion passed by the following vote:<br>AYES: Saylor, Carson, Stallard, Cowan, Frerichs, Barajas, Sandy, Loren<br>NOES: None<br>ABSENT: None<br>ABSTAIN: None |

VALLEY
CLEAN ENERGY

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| **Item 15: Status update and next steps on the potential acquisition of PG&E's local electricity distribution system (Informational)** | Mr. Sears informed those present of the current status of the PG&E bankruptcy reporting that VCE Staff are monitoring the activities within the court. Part of the process is asking parties that are impacted to vote. The Committee that represents the fire victims have expressed their concerns that the deal structure of PG&E using half cash and half stock may not be the most prudent way to fund the fire victims due to the volatility of PG&E's stock. However, the Governor's Office has signed off on the overall structure of the deal. Activities are concluding at bankruptcy court. Mr. Sears reported that the joint letter submitted by VCE, County of San Francisco, Nevada Irrigation District and South San Joaquin Irrigation District in December 2019 to the CPUC has been responded to by the CPUC, wherein the CPUC has invited the four (4) entities to participate in the CPUC process. A response to the CPUC is being drafted. Staff continue to monitor bankruptcy and has submitted a filing to the court informing them that VCE is still interested in pursuing acquisition.<br><br>There was no written or verbal public comment. |
| **Board Member and Staff Announcements** | Chairperson Saylor informed those present that VCE staff are tracking opt ups and outs where there are little bubbles of opting out. The opt outs are not forgotten and hope to get those customers to come back to VCE. He has heard from several Agriculture Customers regarding time of use (TOU) pros and cons.<br><br>Christine Shewmaker provided a verbal comment asking if the CPUC has responded to PG&E's offer of GHG attributes. Chairperson Saylor asked that Mr. Sears respond to Ms. Shewmaker outside of this meeting since this subject matter was not on the agenda.<br><br>There was no written public comment.<br><br>Chairperson Saylor announced that the Board will be going into Closed Session and there will be no reporting out after Closed Session. Chairperson Saylor asked if there was any written or verbal comment from the public on any of the items listed for Closed Session. There was no written or verbal public comment on the Closed Session items. |

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| **Public Comment on Closed Session Items** | Chairperson Saylor announced that the Board will be going into Closed Session and there will be no reporting out after Closed Session.<br><br>Chairperson Saylor asked if there was any written or verbal comment from the public on any of the Closed Session items. There were no written or verbal public comments on the Closed Session items. |
| **Adjournment** | Chairperson Saylor adjourned the meeting at 4:49 p.m. to go into Closed Session. |
| **CLOSED SESSION: Conference with Legal Counsel – Anticipated Litigation** | The Board began Closed Session at 5:00 p.m. and adjourned their Closed Session at 5:30 p.m. There was nothing to report out. |

Alisa M. Lembke
VCEA Board Secretary

**VALLEY CLEAN ENERGY ALLIANCE**
**Board of Directors Meeting**

**Staff Report - Item 5**

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**TO:** VCEA Board

**FROM:** Alisa Lembke, Board Clerk/Administrative Analyst

**SUBJECT:** Community Advisory Committee 2020 Long-Range Calendar

**DATE:** April 9, 2020

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## Recommendation

Please find attached the Board and Community Advisory Committee long-range calendar for 2020.

# VALLEY CLEAN ENERGY

## 2020 Meeting Dates and *Proposed* Topics – Board and Community Advisory Committee

| MEETING DATE | | TOPICS | ACTION |
|---|---|---|---|
| January 9, 2020 | **Board** WOODLAND | • | • |
| January 23, 2020 | **Advisory Committee** WOODLAND | • | • |
| February 13, 2020 | **Board** DAVIS | • Power Purchase Agreement | • Action |
| February 27, 2020 | **Advisory Committee** DAVIS | • Task Groups – Present Tasks/Projects<br>• Update on Regulatory Assistance Project | • Informational<br>• Informational |
| March 12, 2020 | **Board** WOODLAND | • Preliminary FY20/21 Operating Budget (Regular)<br>• GHG-free attributes<br>• Local/Regional Renewable RFO solicitation | • Review<br>• Action<br>• Informational |
| Monday, March 23, 2020 ~~**Special** Board Meeting /~~ ~~**Strategic Planning**~~ **CANCELLED** | **Board WOODLAND Community & Senior Center, Meeting Room #3** | • Strategic Plan<br>• To be rescheduled for a future date | • Discussion/Action |
| March 26, 2020 IRP workshop CANCELLED | **Advisory Committee** WOODLAND | • Integrated Resource Plan (IRP) workshop (to be rescheduled - due date is now September 1, 2020) | • Information |
| April 9, 2020 Via Teleconference | **Board** DAVIS | • Local / Regional Renewable Request for Offers (RFO) solicitation<br>• River City Bank Revolving Line of Credit<br>• Power Purchase Agreement | • Action<br>• Action<br>• Action |

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| April 23, 2020<br>Via Teleconference | **Advisory Committee**<br>DAVIS | • Review Task Groups' projects/tasks "charge" for 2020 | • Action |
| May 14, 2020<br>Via Teleconference | **Board**<br>~~WINTERS~~ | • PPA - YCFCWCD<br>• Greenhouse Gas (GHG)-free attributes<br>• Update on FY20/21 Operating Budget | • Approval<br>• Action<br>• Informational |
| May 28, 2020<br>Via Teleconference<br>IRP Workshop | **Advisory Committee**<br>~~WOODLAND~~ | • Integrated Resource Plan (IRP) Public Workshop, CAC to provide recommendation | • Information / Discussion |
| June 11, 2020 | **Board**<br>DAVIS | • Final Approval of FY20/21 Operating Budget<br>• Extension of Waiver of Opt-Out Fees for one more year<br>• Re/Appointment of Members to Community Advisory Committee and Appoint City of Winters seats to CAC<br>• SMUD Amendment to Contract re: VCE Collections Policy<br>• Update on Integrated Resource Plan Public Workshop | • Approval<br>• Action<br>• Action<br>• Action<br>• Informational |
| June 25, 2020 | **Advisory Committee**<br>DAVIS | • Update on the Integrated Resource Plan (IRP) | • Information |
| July 9, 2020 | **Board**<br>WOODLAND | • Draft Integrated Resource Plan and CAC Recommendation (IRP due 9/1/20) | • Discussion |
| July 23, 2020 | **Advisory Committee**<br>WOODLAND | • Information related to 2021 Integrated Resource Plan Update | • Discussion |
| August 13, 2020 | **Board**<br>DAVIS | • Adoption of Integrated Resource Plan (due September 1, 2020) | • Action |
| August 27, 2020 | **Advisory Committee**<br>DAVIS | • Revised Procurement Guide – Review | • Discussion |
| September 10, 2020 | **Board**<br>WOODLAND | • Residential Time of Use Rate Classes Report<br>• Discussion on River City Bank Revolving Line of Credit | • Information/Discussion<br>• Discussion |

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| September 24, 2020 | **Advisory Committee** WOODLAND | • Committee Evaluation of Calendar Year End (Draft Report)<br>• Revised Procurement Guide – Review Draft Recommendation | • Discussion<br>• Discussion |
| October 8, 2020 | **Board** WINTERS | • Approval of FY19/20 Audited Financial Statements (James Marta & Co.)<br>• River City Bank Revolving Line of Credit | • Action<br>• Discussion/Action |
| October 22, 2020 | **Advisory Committee** DAVIS | • Committee Evaluation of Calendar Year End (Draft Report)<br>• Revised Procurement Guide- Review Draft Recommendation | • Discussion<br>• Discussion |
| November 12, 2020 | **Board** WOODLAND | • | • |
| ~~November 26, 2020~~ **Thanksgiving Holiday – Rescheduled to 3rd Thursday, November 19, 2020** | **Advisory Committee** WOODLAND | • Committee Evaluation of Calendar Year End (Draft Report)<br>• Revised Procurement Guide – Finalize Recommendation to Board | • Discussion<br>• Action: Recommendation to Board |
| December 10, 2020 | **Board** DAVIS | • Election of Officers for 2020 | • Nominations |
| ~~December 24, 2020~~ **Rescheduled to 3rd Thursday, December 17, 2020** | **Advisory Committee** DAVIS | • Election of Officers for 2020<br>• Finalization of Committee Calendar Year End Report | • Nominations<br>• Approve Report |
| January 14, 2021 | **Board** WOODLAND | • Receive CAC Calendar Year End Report<br>• Approve Revised Procurement Guide | • Receive Report<br>• Action |
| January 28, 2021 | **Advisory Committee** WOODLAND | • Review and Discuss Task Groups | • Discuss/Action |

Note: CalCCA Annual Meeting 11/16-11/18, San Jose.

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 6**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** George Vaughn, Finance and Operations Director, VCEA
Mitch Sears, Interim General Manager, VCEA

**SUBJECT:** Financial Update – March 31, 2020 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending March 31, 2020

**DATE:** May 14, 2020

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**RECOMMENDATION**:
Accept the following Financial Statements (unaudited) for the period of March 1, 2020 to March 31, 2020 (with comparative year to date information) and Actual vs. Budget year to date ending March 31, 2020.

**BACKGROUND & DISCUSSION**:
The attached financial statements are prepared in a form to satisfy the debt covenants with River City Bank pursuant to the Line of Credit and are required to be prepared monthly.

The Financial Statements include the following reports:

- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows

In addition, staff is reporting the Actual vs. Budget variances year to date ending March 31, 2020.

<u>Financial Statements for the period March 1, 2020 – March 31, 2020</u>
In the Statement of Net Position, VCEA as of March 31, 2020 has a total of $12,237,321 in its checking, money market and lockbox accounts, $1,100,000 restricted assets for the Debt Service Reserve account and $1,165,419 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and SMUD and owes as of March 31, 2020 $118,890 and $386,332 respectively for a grand total of $505,222. VCEA began paying SMUD for the monthly operating expenditures (starting with January 2018 expenditures) and repayment of the deferred amount of $1,522,433 over a 24-month period. VCEA began paying the Member agencies for the quarterly

reimbursable expenditures starting in June 2019 and repayment of the deferred amount of $556,188 over a 12-month period.

The term loan with River City Bank includes a current portion of $395,322 and a long-term portion of $1,449,514 as of March 31, 2020, for a total of $1,844,836. At March 31, 2020, VCE's net position is $13,164,187.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded $3,093,514 of revenue (net of allowance for doubtful accounts) of which $3,108,575 was billed in March and ($25,333) represent estimated unbilled revenue. The cost of the electricity for the March revenue totaled $2,340,509. For March, VCEA's gross margin is approximately 32% and operating income totaled $438,163. The year-to-date change in net position was $5,835,354.

In the Statement of Cash Flows, VCEA cash flows from operations was negative ($87,728) due to March cash receipts of revenues being lower than the monthly cash operating expenses.

<u>Actual vs. Budget Variances for the year to date ending March 31, 2020</u>

Below are the financial statement line items with variances >$50,000 and 5%:

Salaries & Wages/Benefits - ($165,698) and (36%) – variance is due to having more budgeted filled positions at VCE than we actually have on staff for the majority of the fiscal year.

SMUD Credit Support - ($70,074) and (16%) – variance is due to lower actual customer load than budgeted, which results in a lower payment to SMUD since the payment is based on MWH volume.

SMUD Operating Services - ($109,390) and (41%) – variance is mainly due to SMUD not having yet billed for the IRP update included in the budget.

PG&E Acquisition Consulting - $165,447 and 100% - variance is due to PG&E asset acquisition expenses not having been applicable at the time the budget was constructed.

Marketing Collateral - $75,038 and 44% - variance is due to major marketing campaigns in the first six months of the year being higher than originally anticipated in the budget; this variance is being actively managed and a reduction in the variance is expected by year-end

Contingency - ($174,330) and (100%) - variance is due to VCE not having required usage of contingency funds to date; this is offset by $165,447 of PG&E acquisition-related expenses.

**Attachments:**

1) Financial Statements (Unaudited) March 1, 2020 to March 31, 2020 (with comparative year to date information.)
2) Actual vs. Budget for year to date ending March 31, 2020

VALLEY CLEAN ENERGY

**VALLEY CLEAN ENERGY ALLIANCE**

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF MARCH 1 TO MARCH 31, 2020

PREPARED ON APRIL 29, 2020

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENT OF NET POSITION
March 31, 2020
(UNAUDITED)

| | | |
|---|---|---|
| **ASSETS** | | |
| Cash and cash equivalents | $ | 12,237,321 |
| Accounts receivable, net of allowance | | 3,200,390 |
| Accrued revenue | | 1,729,113 |
| Prepaid expenses | | 1,458 |
| Inventory - Renewable Energy Credits | | - |
| Other current assets and deposits | | 2,540 |
| Total current assets | | 17,170,822 |
| Restricted assets: | | |
| Debt service reserve fund | | 1,100,000 |
| Power purchase reserve fund | | 1,165,419 |
| Total restricted assets | | 2,265,419 |
| Noncurrent assets: | | |
| Other noncurrent assets and deposits | | 100,000 |
| Total noncurrent assets | | 100,000 |
| **TOTAL ASSETS** | $ | 19,536,241 |
| **LIABILITIES** | | |
| Current liabilities: | | |
| Accounts payable | $ | 704,042 |
| Accrued payroll | | 8,685 |
| Interest payable | | 6,430 |
| Due to member agencies | | 118,890 |
| Accrued cost of electricity | | 2,494,884 |
| Other accrued liabilities | | 631,904 |
| Security deposits - energy supplies | | 515,640 |
| User taxes and energy surcharges | | 46,743 |
| Current Portion of LT Debt | | 395,322 |
| Total current liabilities | | 4,922,540 |
| Noncurrent liabilities | | |
| Term Loan- RCB | | 1,449,514 |
| Total noncurrent liabilities | | 1,449,514 |
| **TOTAL LIABILITIES** | $ | 6,372,054 |
| **NET POSITION** | | |
| Restricted | | |
| Local Programs Reserve | | 136,898 |
| Restricted | | 2,265,419 |
| Unrestricted | | 10,761,870 |
| **TOTAL NET POSITION** | $ | 13,164,187 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF MARCH 1, 2020 TO MARCH 31, 2020
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING MARCH 31, 2020 | YEAR TO DATE |
|---|---|---|
| **OPERATING REVENUE** | | |
| Electricity sales, net | $ 3,093,514 | $ 40,472,380 |
| **TOTAL OPERATING REVENUES** | 3,093,514 | 40,472,380 |
| | | |
| **OPERATING EXPENSES** | | |
| Cost of electricity | 2,340,509 | 31,276,756 |
| Contract services | 177,770 | 2,243,845 |
| Staff compensation | 89,965 | 772,492 |
| General, administration, and other | 47,107 | 333,982 |
| **TOTAL OPERATING EXPENSES** | 2,655,351 | 34,627,075 |
| | | |
| **TOTAL OPERATING INCOME (LOSS)** | 438,163 | 5,845,305 |
| | | |
| **NONOPERATING REVENUES (EXPENSES)** | | |
| Interest income | 10,154 | 70,997 |
| Interest and related expenses | (6,422) | (80,948) |
| **TOTAL NONOPERATING REVENUES (EXPENSES)** | 3,732 | (9,951) |
| | | |
| **CHANGE IN NET POSITION** | 441,895 | 5,835,354 |
| Net position at beginning of period | 12,722,292 | 7,328,833 |
| Net position at end of period | $ 13,164,187 | $ 13,164,187 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF MARCH 1 TO MARCH 31, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING MARCH 31, 2020 | YEAR TO DATE |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES** | | |
| Receipts from electricity sales | $ 3,131,581 | $ 44,823,158 |
| Receipts for security deposits with energy suppliers | - | 515,640 |
| Payments to purchase electricity | (2,766,958) | (33,785,360) |
| Payments for contract services, general, and adminstration | (365,602) | (3,205,536) |
| Payments for staff compensation | (86,749) | (767,596) |
| **Net cash provided (used) by operating activities** | (87,728) | 7,580,306 |
| **CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES** | | |
| Loans from member agencies | | (1,500,000) |
| Principal payments of Debt | (32,944) | (131,774) |
| Interest and related expenses | (6,151) | (186,830) |
| **Net cash provided (used) by non-capital financing activities** | (39,095) | (1,818,604) |
| **CASH FLOWS FROM INVESTING ACTIVITIES** | | |
| Interest income | 10,154 | 70,997 |
| **Net cash provided (used) by investing activities** | 10,154 | 70,997 |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | (116,669) | 5,832,699 |
| Cash and cash equivalents at beginning of period | 14,619,409 | 8,670,041 |
| **Cash and cash equivalents at end of period** | $ 14,502,740 | $ 14,502,740 |
| Cash and cash equivalents included in: | | |
| Cash and cash equivalents | $ 12,237,321 | $ 12,237,321 |
| Restricted assets | 2,265,419 | 2,265,419 |
| **Cash and cash equivalents at end of period** | $ 14,502,740 | $ 14,502,740 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF MARCH 1 TO MARCH 31, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING MARCH 31, 2020 | | YEAR TO DATE | |
|---|---|---|---|---|
| **RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES** | | | | |
| Operating Income (Loss) | $ | 438,163 | $ | 5,845,305 |
| Adjustments to reconcile operating income to net cash provided (used) by operating activities: | | | | |
| (Increase) decrease in net accounts receivable | | (421.00) | $ | 1,794,883 |
| (Increase) decrease in accrued revenue | | 25,218 | $ | 2,566,600 |
| (Increase) decrease in prepaid expenses | | 9,497 | $ | (1,458) |
| (Increase) decrease in inventory - renewable energy credits | | - | $ | 207,168 |
| Increase (decrease) in accounts payable | | 11,755 | $ | 117,922 |
| Increase (decrease) in accrued payroll | | 3,216 | $ | 4,896 |
| Increase (decrease) in due to member agencies | | (92,000) | $ | (291,419) |
| Increase (decrease) in accrued cost of electricity | | (426,449) | $ | (2,715,772) |
| Increase (decrease) in other accrued liabilities | | (69,977) | $ | (452,754) |
| Increase (decrease )security deposits with energy suppliers | | - | $ | 515,640 |
| Increase (decrease) in user taxes and energy surcharges | | 13,270 | $ | (10,705) |
| **Net cash provided (used) by operating activities** | $ | (87,728) | $ | 7,580,306 |

**VALLEY CLEAN ENERGY**
**ACTUAL VS. BUDGET FYE 6-30-2020**
**FOR THE YEAR TO DATE ENDING 03-31-20**

| Description | 3/31/2020 YTD FY2020 Actuals | 3/31/2020 YTD FY2020 Budget | YTD Variance | % over/-under |
|---|---|---|---|---|
| Electric Revenue | $ 40,472,378 | $ 41,238,856 | $ (766,478) | -2% |
| Interest Revenues | 70,996 | 94,717 | (23,721) | -25% |
| | | | | |
| Purchased Power | 31,276,757 | 31,847,006 | (570,250) | -2% |
| Labor & Benefits | 772,493 | 886,290 | (113,797) | -13% |
| Salaries & Wages/Benefits | 293,015 | 458,713 | (165,698) | -36% |
| Contract Labor | 451,816 | 418,127 | 33,689 | 8% |
| Human Resources & Payroll | 27,662 | 9,450 | 18,212 | 193% |
| Office Supplies & Other Expenses | 100,762 | 95,924 | 4,838 | 5% |
| Technology Costs | 8,963 | 6,948 | 2,015 | 29% |
| Office Supplies | 3,965 | 926 | 3,039 | 328% |
| Travel | 4,389 | 3,600 | 789 | 22% |
| CalCCA Dues | 81,720 | 81,750 | (30) | 0% |
| Memberships | 1,725 | 2,700 | (975) | -36% |
| Contractual Services | 2,243,793 | 2,239,586 | 4,208 | 0% |
| Don Dame | 12,103 | 13,500 | (1,398) | -10% |
| SMUD - Credit Support | 379,006 | 449,080 | (70,074) | -16% |
| SMUD - Wholesale Energy Services | 423,108 | 423,108 | - | 0% |
| SMUD - Call Center | 496,933 | 507,703 | (10,771) | -2% |
| SMUD - Operating Services | 158,610 | 268,000 | (109,390) | -41% |
| Legal | 79,376 | 126,000 | (46,624) | -37% |
| Regulatory Counsel | 129,078 | 138,960 | (9,882) | -7% |
| Joint Regulatory | 37,241 | 22,500 | 14,741 | 66% |
| Legislative | 45,000 | 45,000 | - | 0% |
| Accounting Services | 10,621 | 18,000 | (7,379) | -41% |
| Audit Fees | 63,000 | 58,500 | 4,500 | 8% |
| PG&E Acquisition Consulting | 165,447 | - | 165,447 | 100% |
| Marketing Collateral | 244,272 | 169,234 | 75,038 | 44% |
| Rents & Leases | 13,038 | 13,170 | (132) | -1% |
| Hunt Boyer Mansion | 13,038 | 13,170 | (132) | -1% |
| Other A&G | 192,642 | 247,040 | (54,398) | -22% |
| PG&E Data Fees | 188,140 | 191,121 | (2,981) | -2% |
| Community Engagement Activities & Sponsorships | 326 | 4,500 | (4,174) | -93% |
| Insurance | 4,177 | 5,519 | (1,342) | -24% |
| New Member Expenses | - | 45,000 | (45,000) | -100% |
| Banking Fees | - | 900 | (900) | -100% |
| Miscellaneous Operating Expenses | 27,587 | 4,599 | 22,988 | 500% |
| Contingency | - | 174,330 | (174,330) | -100% |
| | | | | |
| TOTAL OPERATING EXPENSES | $ 34,627,072 | $ 35,507,946 | $ (880,874) | -2% |
| | | | | |
| Interest Expense - Munis | 14,965 | 41,702 | (26,738) | -64% |
| Interest on RCB loan | 55,408 | 65,010 | (9,602) | -15% |
| Interest Expense - SMUD | 10,575 | 11,527 | (952) | -8% |
| Miscellaneous Non-Operating | - | - | - | 0% |
| | | | | |
| NET INCOME | $ 5,835,354 | $ 5,707,388 | $ 127,966 | 2% |

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 7**

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: May 14, 2020

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Please find attached Keyes & Fox's April 2020 Regulatory Memorandum dated May 6, 2020, an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

**Attachment:** Keyes & Fox Regulatory Memorandum dated May 6, 2020

KEYES&FOX LLP

# Valley Clean Energy Alliance

**Regulatory Monitoring Report**

| | |
|---|---|
| To: | Valley Clean Energy Alliance ("VCE") Board of Directors |
| From: | Sheridan Pauker, Partner, Keyes & Fox, LLP<br>Tim Lindl, Partner, Keyes & Fox LLP<br>Ben Inskeep, Principal Analyst, EQ Research, LLC |
| Subject: | Regulatory Update |
| Date: | May 6, 2020 |

## Summary


Keyes & Fox LLP and EQ Research, LLC, are pleased to provide VCE's Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). A Glossary of Acronyms used is provided at the end of this memo.

In summary, this month's report includes regulatory updates on the following priority issues:

- **Investigation of PG&E Bankruptcy Plan**: The ALJ issued a Proposed Decision that would approve PG&E's reorganization plan and establish additional management, operational, and oversight requirements applicable to PG&E.
- **Investigation into PG&E Violations Related to Wildfires:** Parties filed responses to Commissioner Rechtschaffen's Motion requesting full CPUC review of the Presiding Officer's Decision and associated appeals. Commissioner Rechtschaffen subsequently filed a Decision Different regarding the penalties and other remedies that should be imposed on PG&E, to which parties responded in comments.
- **IRP Rulemaking:** The CPUC notified parties that it intends to implement a citation program for lateness or failure to file accurate or complete individual IRPs. The CPUC issued D.20-03-028 adopting the 2019-2020 Reference System Portfolio (RSP) that will be used by LSEs to create their individual 2020 IRPs. The ALJ issued a Ruling establishing final individual LSE load forecasts and GHG benchmarks for use in IRPs. The California Energy Storage Alliance filed a Petition for Modification of D.19-11-016, which required LSEs including VCE to make additional resource adequacy procurement for 2021-2023, and parties filed responses.
- **RA Rulemaking (2019-2020):** Parties filed comments and reply comments in response the CPUC's Proposed Decision on the central buyer structure and identities for local RA beginning 2023. Parties also filed comments and reply comments relating to limited rehearing of D.19-10-020 on "clarifications" to rules governing the use of imports to meet RA requirements.
- **RA Rulemaking (2021-2022):** Parties filed reply comments on the Track 2 proposals. The ALJ issued a Ruling modifying the timeline of the CAISO local and flexible capacity requirements reports in response to a CAISO motion indicating it would not be able to file the reports pursuant to the previously established timeline. CAISO issued its draft 2021 local capacity requirements report, on which parties filed comments. Parties filed draft 2019 load impact evaluations, which

describe how demand response resources receive qualifying capacity values based on application of the load impact protocols. CAISO subsequently filed its final 2021 local capacity requirements report.

- **PCIA Rulemaking:** The CPUC issued D.20-03-019 on departing load forecast and the presentation of the PCIA rate on tariffs and bills, which had been discussed in Working Group 1. Protect Our Communities Foundation and Utility Consumers' Action Network separately filed Motions requesting evidentiary hearings on the final Working Group 3 report.
- **PG&E's 2019 ERRA Compliance:** Joint CCAs and the Public Advocates Office separately filed protests of PG&E's 2019 ERRA Compliance application. PG&E filed supplemental testimony. The ALJ issued an E-mail Ruling setting a prehearing conference.
- **PG&E's 2020 ERRA Forecast:** PG&E filed an Application for Rehearing of D.20-02-047, which was the final decision issued in this proceeding, and the Joint CCAs filed a response. A group of CCAs including VCE filed a protest of PG&E's AL 5781-E, which implements D.20-02-047. Later in April, PG&E filed AL 5661-E and additional supplemental advice letters that implement PG&E's 2020 Annual Electric True-Up.
- **RPS Rulemaking:** Parties filed comments and reply comments on the Staff Proposal on the BioMAT proposal, as well as on a separate Staff Proposal making changes to confidentiality rules regarding the RPS program.
- **PG&E's Phase 1 GRC:** No updates this month.
- **PG&E's Phase 2 GRC:** PG&E filed the IOUs' Final Essential Usage Study Plan. PG&E held workshops on April 14-15, 2020, on its proposals for marginal cost and revenue allocation. The ALJ issued an E-mail Ruling that granted a PG&E request for an extension to file updated testimony and for parties' responsive testimony.
- **Direct Access Rulemaking:** No updates this month. Previously, the ALJ informed parties that the release of Energy Division's recommendation as to whether to expand Direct Access has been delayed.
- **Wildfire Cost Recovery Methodology Rulemaking:** No updates this month. (An August PG&E Application for Rehearing remains pending regarding D.19-06-027, establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay.)
- **Investigation into PG&E's Organization, Culture and Governance:** No updates this month.
- **Wildfire Fund Non-Bypassable Charge (AB 1054):** No updates this month.
- **Other Regulatory Developments:**
    - **CPUC to Open New IRP Proceeding**: The CPUC will consider opening a new IRP rulemaking by issuing an Order Instituting Rulemaking at its May 7, 2020, meeting. The new proceeding would address IRP planning and procurement issues going forward and close the existing IRP rulemaking.
    - **CPUC Issues Proposed Decision on De-Energization**: The CPUC issued a Proposed Decision adopting revised guidelines governing PSPS, or "de-energization," events. Also recently, a joint group of parties filed joint Motion for an emergency order adopting PSPS protocols during the COVID-19 pandemic.
    - **CPUC Issues Proposed Decision on Track 1 Microgrids**: The CPUC issued a Proposed Decision in Track 1 of its microgrid rulemaking (R.19-09-009), which addresses actions that would support immediate improvements in resiliency.
    - **CCAs Appeal Large CPUC Fines for RA Violations**: East Bay Community Energy and San Jose Clean Energy filed applications appealing citations of more than $600,000 and $1.1 million, respectively, assessed by the CPUC Consumer Protection and Enforcement

Division related to non-compliance with year-ahead resource adequacy requirements (K.20-04-006 and K.20-04-005).

- **PG&E Files Application for $7.5 Billion in Recovery Bonds**: A new PG&E application is requesting the CPUC: (1) apply the Stress Test Methodology adopted by the CPUC in D.19-06-027; and (2) determine that $7.5 billion of 2017 catastrophic wildfire costs and expenses are Stress Test Costs that may be financed through the issuance of recovery bonds, as provided by SB 901 (A.20-04-023).
- **CPUC Grants Extension for 2021 ERRA Forecast Application**: On April 16, 2020, PG&E requested an extension of time to file its 2021 ERRA Forecast application from June 1, 2020, to July 1, 2020. That extension was granted.

## Investigation of PG&E Bankruptcy Plan

On April 20, 2020, the ALJ issued a Proposed Decision that would approve PG&E's reorganization plan and establish additional management, operational, and oversight requirements applicable to PG&E.

- **Background**: This case is addressing regulatory review and approval of PG&E's bankruptcy plan, in particular whether the plan meets the AB 1054 Wildfire Fund requirements, which imposes a June 30, 2020 deadline. Under AB 1054, in order for PG&E to be eligible to participate in the Wildfire Fund, its plan must be "neutral, on average, to ratepayers." This proceeding is considering the ratemaking implications of the proposed plan and settlement agreement, whether the plan satisfactorily resolves claims for monetary fines of penalties for PG&E's pre-petition conduct, whether to approve the governance structure of the utility and the appropriate disposition of potential changes to PG&E's corporate structure and authorization to operate, whether to make any other approvals related to the confirmation and implementation of the plan, and any other findings necessary to approve a proposed settlement, including but not limited to whether doing so is in the public interest. This proceeding will allow the CPUC to approve a restructuring plan for PG&E, which ultimately must secure approval for the plan by the federal Bankruptcy Court.

  PG&E's reorganization plan would result in a $13.5 billion Fire Victim Trust and a $11 billion settlement with insurance claim holders and companies. The original reorganization plan also specified that the Fire Victim Trust would be funded through $6.75 billion in cash, and $6.75 billion in stock of reorganized PG&E Corp., representing at least a 20.9% share ownership of the reorganized PG&E Corp. Notably, the Official Committee of Tort Claimants of PG&E have shifted their support from the plan of the Ad Hoc Committee of Senior Unsecured Noteholders of PG&E to the amended plan proposed by PG&E, as modified in the PD.

  On January 22, 2020, PG&E announced that it had reached an agreement with AHC regarding its reorganization plan. This agreement was approved by the Bankruptcy Court on February 4, 2020. PG&E's amended reorganization plan now addresses the claims of holders of utility prepetition funded debt, separately classifies Ghost Ship Fire Claims from other Fire Claims (i.e., rather than channeling them through the Fire Victim Trust), clarifies that all accrued and unpaid payments as of the Effective Date that are due under the Debtors' Employee Benefit Plans will be paid on or as soon as practicable after the Effective Date, and incorporates agreements with IBEW Local 1245.

  On February 18, 2020, the Assigned Commissioner (President Batjer) issued a Ruling identifying ten proposals for providing more oversight of PG&E along with management and operational changes at PG&E. Among the proposals is for PG&E to create local operating regions, including appointing regional officers to manage each region and having each region have its own risk officer and safety officer. The last of the ten proposals identifies a roadmap for how the CPUC will closely monitor PG&E's performance, specifying various steps that PG&E could progress through if repeatedly found to be non-compliant, with the last step being a review and possible revocation of its Certificate of Public Convenience and Necessity.

In briefing, Joint CCAs argued that PG&E should be required to divest its retail generation and urged rejection of provisions of the reorganization plan that would constrain CPUC authority. It also expressed concern that the ratepayer neutrality requirement of AB 1054 would not be achieved under the reorganization plan. The City and County of San Francisco expressed concern with the high levels of debt and debt leverage that PG&E will have coming out of bankruptcy and argued the reorganization plan fails to meet the requirements of AB 1054. It expressed support for enhanced oversight but recommended specific changes to the process so as not to limit the CPUC's authority regarding enforcement. The City of San Jose also concluded that the reorganization plan fails to meet the ratepayer neutrality requirement of AB 1054 and argued that the CPUC must reject any proposed moratorium on further organizational restructuring, including whether municipalization might be appropriate.

- **Details**: The PD would approve the financial elements of PG&E's reorganization plan and would approve, with modifications, numerous proposals put forth by CPUC President Batjer for providing more oversight of PG&E along with management and operational changes at PG&E. The PD would not address the Joint CCAs' recommendation that the CPUC develop a plan to phase out PG&E's retail electric generation service to customers or CCA requests that the CPUC require PG&E to undertake asset sales, instead determining that the PG&E Safety Culture proceeding (I.15-08-019) is the more appropriate forum for these issues. The PD also would reject the Joint CCAs' request to revoke PG&E's existing holding company structure.

  Among other determinations, the PD would also:

  - Require that PG&E implement regional restructuring, resulting in local PG&E operating regions led by an officer of the utility that reports directly to the CEO. PG&E would be required to file an application for regionalization by June 30, 2020.
  - Require that PG&E to have a separate Chief Risk Officer (CRO) and Chief Safety Officer (CSO). It would establish an Independent Safety Monitor that would functionally act in the same capacity as the federal court monitor after the termination of the federal monitor. The details on implementing the Independent Safety Monitor would be determined in the future.
  - Clarify and expand the authority of the Safety and Nuclear Oversight (SNO) Committees of PG&E's boards of directors (e.g., the SNO Committees would have oversight over PG&E's Wildfire Mitigation Plan and PSPS program, among others).
  - Provide for the establishment of additional requirements applicable to the boards of directors of PG&E and PG&E Corp., but allow their membership to remain largely the same.
  - Find that PG&E may not seek cost recovery for wildfire claims except in connection with the proposed nominally offset securitization described in the documents attached to PG&E's March 24, 2020 motion for official notice.
  - Decline to adopt a safety-based earnings adjustment mechanism, but it will continue to be considered it in the future, either in the PG&E Safety Culture proceeding (I.15-08-019) or another proceeding.
  - Require PG&E to reimburse the CPUC for, and bar cost recovery on, various costs the CPUC incurred for outside expertise in relation to the Chapter 11 bankruptcy cases.
  - Adopt an Enhanced Oversight and Enforcement process for PG&E, revised and detailed in Appendix A of the PD, designed to provide a clear roadmap for how the CPUC will closely monitor PG&E's performance. The proposal specifies various steps that PG&E could progress through if repeatedly found to be non-compliant, with the last step being a review and possible revocation of its certificate of public convenience and necessity.

- **Analysis**: The PD would provide the CPUC's approval allowing PG&E to emerge from bankruptcy under PG&E's reorganization plan, with some additional changes required to its operations, management, and oversight, although keys aspects of requirements related to regionalization and the independent monitor remain to be determined in the future. The PD excludes consideration of municipalization issues and does not address VCE's bid to PG&E to purchase the transmission and distribution assets of PG&E as part of PG&E's restructuring, along with other proposals for more significant reforms of PG&E's structure and operations. The stock component of the amended reorganization plan could align tort claimants with PG&E in ways that are detrimental to VCE's bid for municipalization and other interests as well. VCE is a party to this proceeding.

- **Next Steps**: Comments and reply comments on the PD are due May 11, 2020, and May 18, 2020, respectively. The CPUC may consider adopting the PD, at the earliest, at its May 21, 2020 meeting. The CPUC intends to complete the proceeding sufficiently in advance of the June 30, 2020 deadline in order to allow the bankruptcy court sufficient time to address and approve any changes to the plan that result from CPUC directives.
- **Additional Information**: Proposed Decision (April 20, 2020); Email Ruling granting PG&E motion to take official notice (March 24, 2020); PG&E Motion for official notice and Plan of Reorganization (March 24, 2020); Ruling requesting comments on the Assigned Commissioner's proposals (February 18, 2020); Press Release on President's statement on PG&E's bankruptcy plan (February 18, 2020); PG&E Notice of Amended Plan of Reorganization and Testimony (January 31, 2019); Ruling modifying procedural schedule (January 16, 2020); Ruling on Section 854 (November 27, 2019); Scoping Memo and Ruling (November 14, 2019); PG&E Amended Plan (November 5, 2019); Order Instituting Investigation (October 4, 2019); Docket No. I.19-09-016.

## Investigation into PG&E Violations Related to Wildfires

Between April 9 and April 13, 2020, parties filed responses to Commissioner Rechtschaffen's Motion requesting full CPUC review of the Presiding Officer's Decision (POD) and to appeals made of the POD. On April 20, 2020, Commissioner Rechtschaffen filed a "Decision Different" regarding the penalties and other remedies that should be imposed on PG&E. Comments on the Decision Different were filed May 1, 2020.

- **Background**: The scope of the proceeding includes violations of law by PG&E with respect to the 2017 and 2018 wildfires, including the 2017 Tubbs Fire and the 2018 Camp Fire, what penalties should be assessed, what remedies or corrective actions should occur, and what if any systemic issues contributed to the ignition of the wildfires. SED issued a Fire Report on June 13, 2019 that found deficiencies in PG&E's vegetation management practices and procedures and equipment operations in severe conditions. CAL FIRE also found that PG&E's electrical facilities ignited all but one of the fires addressed in this investigation. This investigation orders PG&E to take immediate corrective actions to come into compliance with CPUC requirements.

  The terms of the Settlement Agreement between PG&E, SED, the CPUC's Office of the Safety Advocate, and CUE specified that PG&E's shareholders are on the hook for $1.675 billion in financial obligations as a result of numerous wildfires its equipment played a role in sparking in 2017 and 2018. Specifically, PG&E would not be permitted seek rate recovery of wildfire-related expenses and capital expenditures totaling $1.625 billion. In addition, PG&E would be required to spend $50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives.

  The Presiding Officer's Decision provides for penalties on PG&E totaling $2.137 billion. The total includes an increase of $198 million in the disallowances for wildfire-related expenditures that was provided in the settlement agreement. It also increased PG&E's System Enhancement Initiatives and corrective actions by $64 million and added a $200 million fine payable to the General Fund. In total, these changes increased PG&E's penalties by $462 million relative to the settlement agreement. The Presiding Officer's Decision also required any tax savings associated with the shareholder payments under the settlement agreement, as modified by this decision, to be returned to the benefit of ratepayers. Finally, it denied all previously unaddressed motions filed in the docket.

- **Details**: The Decision Different approves with modifications a settlement proposed by PG&E, the Safety and Enforcement Division, the Office of the Safety Advocate, and the Coalition of California Utility Employees. The Decision Different would approve penalties totaling $2.137 billion, however the $200 million fine payable to the General Fund would be permanently suspended, resulting in an effective penalty total of $1.937 billion. In addition, the Decision Different would require any tax savings associated with the shareholder obligations for *operating expenses* under the settlement agreement (but not tax savings associated with capital expenditures, in order to avoid any potential legal conflict with IRS normalization rules) to be returned to the benefit of ratepayers in PG&E's next GRC. The Decision Different also rejects PG&E's attempt to classify the $200 million fine as a Fire Victim Claim or Fire Claim.

  PG&E supports adoption of the Decision Different without modifications. The Official Committee of Tort Claimants also generally supports the Decision Different. Other parties primarily expressed opposition to the permanent suspension of the $200 million fine.

- **Analysis**: If the Presiding Officer's Decision or Decision Different become final, this investigation will have resulted in the largest penalty in CPUC history. It also will require additional spending by PG&E to mitigate future wildfire risk, potentially positively impacting the quality of service experienced by VCE customers. Monetary penalties will ultimately be handled in the Bankruptcy Court. Prepetition liabilities must be resolved in this proceeding so that PG&E can finalize its reorganization plan within the time frame provided in AB 1054 (*i.e.*, June 30, 2020). The Decision Different, whose key provisions are supported by PG&E and the Official Committee of Tort Claimants, would not hinder PG&E's reorganization plan from moving forward, whereas PG&E has argued that provisions in the Presiding Officer's Decision could imperil the plan.

- **Next Steps**: Consideration of a final decision in this proceeding is on the CPUC's May 7 meeting agenda.

- **Additional Information**: Decision Different of Commissioner Rechtschaffen (April 20, 2020); Ruling shortening response time (March 30, 2020); Motion by Commissioner Rechtschaffen (March 27, 2020); Appeal of Thomas del Monte and Wild Tree Foundation (March 27, 2020); Motion for Party Status by PG&E Tort Claimants Committee (March 25, 2020); Appeal by CUE of Presiding Officer's Decision (March 19, 2020); Motion by SED (March 18, 2020); Appeal by PG&E of Presiding Officer's Decision (March 18, 2020); Presiding Officer's Decision approving the settlement agreement with modifications (February 27, 2020); Joint Motion for Approval of Settlement Agreement (December 17, 2019); Amended Scoping Memo and Ruling (October 28, 2019); GO 95 Rule 31.1; GO 95 Rule 35; GO 95 Rule 38; Order Instituting Investigation (June 27, 2019); Docket No. I.19-06-015.

## IRP Rulemaking

On April 1, 2020, the California Energy Storage Alliance (CESA) filed a Petition for Modification (PFM) of D.19-11-016, which required LSEs including VCE to make additional resource adequacy procurement for 2021-2023. On April 3, 2020, the CPUC notified parties that it intends to implement a citation program for lateness or failure to file accurate or complete individual IRPs. On April 6, 2020, the CPUC issued D.20-03-028 adopting the 2019-2020 Reference System Portfolio (RSP) that will be used by LSEs to create their individual 2020 IRPs. On April 15, 2020, the ALJ issued a Ruling establishing final individual LSE load forecasts and GHG benchmarks for use in individual LSE IRPs. Parties filed responses to CESA's PFM on April 21, 2020, pursuant to the ALJ's Email Ruling that shortened the response time.

- **Background**: In the CPUC's IRP process, the RSP is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) to be used in statewide planning and future procurement.

D.19-11-016, addressed the potential RA capacity shortage identified through two tranches. Tranche 1 consists of a *recommendation* that the state Water Resources Control Board (Water Board) extend the retirement dates for several existing natural gas generation facilities that use once-through cooling systems. Tranche 2 consists of a mandatory procurement of 3,300 MW of additional capacity from resources incremental to baseline capacity included in the 2022 PSP. At least 50% of resources must be on-line by August 1, 2021, 75% by August 1, 2022, and 100% by August 1, 2023. VCE's incremental system RA procurement requirements for these respective deadlines are 6.3 MW, 9.4 MW, and 12.6 MW.

D.20-03-028 established a 2019-2020 RSP based on a GHG target for the electric sector for 2030 of 46 million metric tons (MMT), but, with the revisions adopted, also requires LSEs to file an IRP scenario based on a more aggressive 38 MMT target. The resulting 2019-2020 RSP under both targets includes a large amount of new solar, wind, and battery storage resources. The CPUC will explore further in the procurement track of this or a successor proceeding how to go about ensuring that these additional resources, or others with equivalent attributes, are planned for and procured, as well as the need for development of diverse resources and those that may require multiple off-takers in order to be developed. D.20-03-028 specifies additional requirements for LSEs in their 2020 IRPs.

- **Details**: CESA's PFM requests that the CPUC allow IOUs to submit Tier 2 advice letters for expedited 30-day approval for any incremental resource contracts executed to meet the 2021 compliance requirements under D.19-11-016 and to come online by the August 1, 2021, deadline. In contrast, D.19-11-016 had directed IOUs to use the *Tier 3* advice letter process, which requires a Commissioner-level approval (typically a four to six-month process). CESA is concerned that the longer process would force many projects to proceed with equipment procurement and construction activities without CPUC approval for many months, which it says could endanger the ability of projects to achieve financing, permitting, procurement, and construction milestones.

  The ALJ Ruling establishes final individual LSE load forecasts and GHG benchmarks that LSEs are required to use in their next IRP. The Ruling provides that VCE's 2030 load forecast is 761 GWh, which is 1.00% of load within PG&E's territory and corresponds to 2030 GHG benchmarks of 0.156 MMT (under the 46 MMT scenario) and 0.129 MMT (under the 38 MMT scenario).

  The ALJ also notified parties that the Energy Division is in the process of developing a citation program similar to those in place for the filing of resource adequacy and RPS filings, which will allow the imposition of fines for late and/or incomplete filings. Additional details on the citation program (e.g., how much potential fines could be and when specifically the program will be established) were not provided.

- **Analysis**: CESA's PFM, if granted, would only impact the approval process for IOU procurement and would not directly impact VCE's required procurement.

  The procurement track of this proceeding could potentially diminish VCE's authority and control over its resource procurement decisions, although the scope of centralized procurement is now limited to establishing a procurement backstop mechanism and procurement of resources requiring collective action. D.20-03-028 clarified several aspects of D.19-11-016 that affect the types of resources VCE is allowed to procure for its additional system RA requirement.

  The 2019-2020 RSP provides for large additions of solar and energy storage resources to California's supply mix, as well as smaller quantities of wind, over the next decade.

  LSEs must use the individual load forecasts established in the ALJ Ruling in developing their IRPs. VCE's 2030 load forecast in its 2018 IRP was 726 GWh, which is less than the 761 GWh load forecast for its 2020 IRP.

  The need for the creation of the IRP citation program stems from Commercial Energy of California's failure to file any IRP in 2018, according to the ALJ. While the amount and process for assessing penalties for non-compliant IRPs is unclear, the CPUC's move to establish such a program fits a broader trend of the CPUC providing enhanced scrutiny of LSE compliance filings.

- **Next Steps**: Energy Division will provide final IRP templates by May 11, 2020. VCE's IRP is due on September 1, 2020.
- **Additional Information**: Ruling establishing LSE load forecasts (April 15, 2020); D.20-03-028 on RSP and 2020 IRP filing requirements (April 6, 2020); CESA's PFM of D.19-11-016 (April 1, 2020); List of Baseline Resources (December 2, 2019); D.19-11-016 (November 13, 2019); Ruling initiating procurement track (June 20, 2019); D.19-04-040 on 2018 IRPs and 2020 IRP requirements (May 1, 2019); Docket No. R.16-02-007.

## RA Rulemaking (2019-2020)

Parties filed comments and reply comments on April 6, 2020, and April 13, 2020, respectively, in response to an ALJ Ruling relating to limited rehearing of D.19-10-020 on "clarifications" to rules governing the use of imports to meet RA requirements. Parties filed comments and reply comments, respectively, on April 15, 2020, and April 20, 2020, in response the CPUC's Proposed Decision on the central buyer structure and identities for local RA beginning 2023.

- **Background**: This proceeding has three tracks. It is currently focused on remaining central buyer issues from Track 2 as well as limited hearing of certain RA import issues. Track 1 addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program and is closed.

  In Track 2, the CPUC previously adopted multi-year Local RA requirements and declined to adopt a central buyer mechanism (D.19-02-022 issued March 4, 2019). A proposed settlement agreement, filed by CalCCA among other parties (but not PG&E), would create an RA Central Procurement Entity ("CPE"), unidentified in the Settlement Agreement, to procure residual collective RA for all CPUC-jurisdictional LSEs that is not met by individual LSEs. Under the proposed settlement, individual LSEs would be able to choose to procure their share of the collective RA requirement, or they may allow the CPE to procure their share on default. Costs would be allocated afterwards based on cost causation principles.

  In Track 3, D.19-06-026 adopted CAISO's recommended 2020-2022 Local Capacity Requirements and CAISO's 2020 Flexible Capacity Requirements and made no changes to the System capacity requirements. It established an IOU load data sharing requirement, whereby each non-IOU LSE (e.g., CCAs) will annually request data by January 15 and the IOU will be required to provide it by March 1. It also adopted a "Binding Load Forecast" process such that an LSE's initial load forecast (with CEC load migration and plausibility adjustments based on certain threshold amounts and revisions taken into account) becoming a binding obligation of that LSE, regardless of additional changes in an LSE's implementation to new customers.

  D.19-10-020 purported to affirm existing RA rules regarding imports, but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market.

  On February 11, 2020, a group of clean energy and energy storage parties filed a PFM of D.20-01-004, seeking a revision to the definition of "Hybrid Resource."

  The pending PD would adopt implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. If an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. Under this structure, LSEs within PG&E's

and SCE's TAC areas would not have a local RA requirement beginning in the 2023 compliance year. A competitive solicitation process would be used by the CPEs to procure RA products. Costs incurred by the CPE would be allocated ex post based on load share, using the CAM mechanism. Notably, the PD would reject CalCCA's settlement agreement that would have created a residual central buyer structure (and did not specify the identity of the central buyer) and a multi-year requirements for system and flexible RA, finding it not to be a workable plan.

- **Details**: Parties have also had numerous ex parte meetings with the CPUC Commissioners and their staff this month regarding the central buyer PD. CalCCA argued in comments that if the settlement agreement is not adopted, the CPUC should incorporate a financial crediting mechanism for LSEs that "show" local RA resources to the CPE to avoid undermining incentives for the development of local preferred or energy storage resources by LSEs. CalCCA also made recommendations for improving the CPE procurement process, urged the CPUC to employ an LSE-specific generation-side charge for cost recovery that uses the methodology developed for purposes of the IRP procurement track in the central procurement process, and requested that the IOUs be deemed the CPE on an interim basis only as an alternative is developed.
- **Analysis**: The PD, if approved by the CPUC, would resolve the central buyer issues. Moving to a central procurement entity as proposed would impact VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework, eliminating the need for monthly local RA showings and associated penalties and/or waiver requests from individual LSEs, but also eliminating VCE's autonomy with regard to local RA procurement and placing this in the hands of PG&E.
- **Next Steps**: The PD is on the Consent Agenda for the CPUC's May 7, 2020 meeting.
- **Additional Information**: Proposed Decision on central buyer (March 26, 2020); Ruling establishing process for rehearing of D.19-10-021 (March 20, 2020); D.20-03-016 granting limited rehearing of D.19-10-021 (March 12, 2020); PFM of D.20-01-004 (February 11, 2020); D.20-01-004 on qualifying capacity value of hybrid resources (January 17, 2020); D.19-12-064 granting motion for stay of D.19-10-021 (December 23, 2019; Petition for Modification of D.19-06-026 by CalCCA (October 30, 2019); D.19-10-021 affirming RA import rules (October 17, 2019); PG&E PFM regarding PG&E Other disaggregation (September 11, 2019); Joint Motion to adopt a settlement agreement for a residual central procurement entity (August 30, 2019); D.19-06-026 adopting local and flexible capacity requirements (July 5, 2019); Docket No. R.17-09-020.

## RA Rulemaking (2021-2022)

Parties filed reply comments on the Track 2 proposals on April 2, 2020. Also on April 2, 2020, the ALJ issued a Ruling modifying the timeline of the CAISO local and flexible capacity requirements reports in response to a CAISO motion indicating it would not be able to file the reports pursuant to the previously established timeline. On April 8, 2020, CAISO issued its draft 2021 local capacity requirements report, on which parties filed comments on April 17, 2020. On April 30, 2020, parties filed draft 2019 load impact evaluations, which describe how demand response resources receive qualifying capacity values based on application of the load impact protocols. CAISO filed its final 2021 local capacity requirements report on May 1, 2020.

- **Background**: Per the Scoping Memo, this proceeding is divided into 4 tracks:
    1. Track 1 considers revisions to the RA import rules.
    2. Track 2 considers System and Flexible RA requirements for 2021 and Local RA requirements for 2021-2023. It also considers time-sensitive refinements to the RA program, including modifications to the maximum cumulative capacity (MCC) buckets to address increasing reliance on use-limited resources to meet reliability and needs; using a working group process to consider qualifying capacity counting conventions and requirements for hydro resources, hybrid resources, and third-party demand response

resources; re-aggregation of the "PG&E Other" area; and changes to the existing penalty structure and waiver process to address potential market power.

3. Track 3 examines the broader RA capacity structure to address energy attributes and hourly capacity requirements, given the increasing penetration of use-limited resources, greater reliance on preferred resources, rolling off of a significant amount of long-term tolling contracts held by utilities, and material increases in energy and capacity prices experienced in California over the past years.

4. Track 4 will consider the 2022 program year requirements for System and Flexible RA, and the 2022-2024 Local RA requirements.

<u>Track 1 Staff Proposal</u>

In Track 1, the Energy Division is proposing the following measures to reduce speculation and potential gaming in the RA import market to ensure electricity is delivered into California when it is actually needed:

1. Require resource-specific RA imports to be pseudo-tied or dynamically scheduled into the CAISO day-ahead and real-time markets and to have resource-specific IDs;
2. Require non-resource specific RA imports (i.e., energy contracts) to (a) have contractually specified fixed energy price provisions and contain no curtailment provisions, (b) deliver or schedule energy into the day-ahead and real-time markets, and (c) deliver energy at least during the availability assessment hours regularly throughout the RA compliance month; and
3. Require load-serving entities (LSEs) to provide RA import contracts in a timely manner, with no provisions redacted, to Energy Division staff in order for the RA import contracts to count towards an LSE's RA obligation.

<u>Track 2 Staff Proposal</u>

In Track 2, with respect to Energy Division's MCC proposal, for background, the MCC bucket system, which was last updated in 2012, groups capacity resources into categories (currently 5 in total) based on their monthly availability limits during summer (i.e., peak) months, and limits the amount of capacity that may be procured from use-limited resources to specified percentages of RA capacity needs. The Staff Proposal contains four options for updating the MCC bucket system and recommends Option #4b (essentially an all of the above option). Of note, solar and wind are currently considered "unrestricted" resources (Category 4), meaning that they are not limited to specified maximum quantities. Energy Division's proposal would retain solar and wind within Category 4, but modify it to provide that at least 56.1% of resources must be 24-hour dispatchable resources. This amount was arrived at by analyzing the MCC bucket percentages using net load duration curves (i.e., load minus solar and wind).

Energy Division's other Track 2 proposals include re-aggregating the PG&E "Other" Local Area; requiring all non-emergency DR except DR auction mechanism (DRAM) resources be required to dispatch for a four-hour period during RA measurement hours on three days during the July - September time frame; establishing an optional alternative to the use of LIPs for non-IOU DR resources; supporting the design and application of the current interim methodology for hybrid resource (i.e., generation resources paired with energy storage); capping the effective flexible capacity of energy storage resources; recommending that the CPUC affirm several reporting elements that are largely reflected in the 2020 RA Filing Guide to avoid confusion about how capacity should be reported; and proposing to clarify the meaning of notices indicating an RA deficiency versus a need for corrections; and modifying the RA penalty structure by increasing penalties for summer months and decreasing penalties in non-summer months. It also requested comments on whether it is appropriate to penalize an LSE twice when a month ahead deficiency is redundant to a year ahead deficiency that was not cured in the interim and whether a procedure should be established to remove LSEs that consistently cannot procure sufficient capacity from the market, and a potential alternative where penalties are escalated for repeated violations.

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- **Details**: CAISO's 2021 Final Local Capacity Technical Study results will be used by CPUC for consideration in its 2021 resource adequacy requirements program and by CAISO as Local Capacity Requirements and for assisting in the allocation of costs of any CAISO procurement of capacity needed to achieve the reliability standards. The report also provides details regarding CAISO's estimates of battery storage needs for local areas.
- **Analysis**: Regulatory developments under consideration in this proceeding that may impact VCE's capacity procurement obligations include the consideration of hourly capacity requirements in light of the increasing penetration of use-limited resources; modifications to maximum cumulative capacity buckets and whether the RA program should *cap* use-limited and preferred resources; whether the CPUC should cap imports; the potential expansion of multi-year local forward RA to system or flexible resources; RA penalties and waivers; counting conventions for hydro, hybrid resources, and DR resources; and Marginal ELCC counting conventions for solar, wind and hybrid resources.
- **Next Steps**: A Track 1 proposed decision is anticipated to be issued soon.

  A proposed decision on Track 2 issues is anticipated to be issued in May.

  Also in Track 2, comments and reply comments on the final CAISO local capacity requirements report are due May 8, 2020, and May 13, 2020, respectively. CAISO will issue its final 2021 flexible capacity requirements report on May 15, 2020, with comments due on May 20, 2020.

  In Track 3, proposals from parties and Energy Division are due July 10, 2020.

  The schedule and scope of issues for Track 4 will be established in a later Scoping Memo.
- **Additional Information**: 2021 Final Local Capacity Technical Study (May 1, 2020); DR Working Group Final Report, Hybrid Counting Working Group Final Report, Hydro Working Group Final Report and ELCC Working Group Final Report (March 11, 2020); Ruling providing Energy Division's Track 1 Proposal (February 28, 2020); Ruling modifying Track 2 schedule (February 28, 2020); Scoping Memo and Ruling (January 22, 2020); Ruling attaching Energy Division's Track 2 proposals (February 21, 2020); Ruling attaching Energy Division's Maximum Cumulative Capacity (MCC) buckets proposal (February 7, 2020); Order Instituting Rulemaking (November 13, 2019); Docket No. R.19-11-009.

## PCIA Rulemaking

On April 1, 2020, Protect Our Communities Foundation and Utility Consumers' Action Network separately filed Motions requesting evidentiary hearings on the final Working Group 3 report. On April 6, 2020, the CPUC issued D.20-03-019 on departing load forecast and the presentation of the PCIA rate on tariffs and bills, which had been discussed in Working Group 1.

- **Background**: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity.

  Phase 2 relies primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

  The CPUC has not yet issued Proposed Decisions regarding Working Group 2 or 3.

  **Details**: D.20-03-019 concluded the work of Working Group 1, declining to adopt any technical modifications to departing load forecasting. It requires each IOU to report their meet-and-confer activities with the CCAs in ERRA application testimony and in their initial annual RA load forecasting filing. It directs the IOUs to collaborate to submit a joint proposal for bill and tariff changes to show a PCIA line item in their tariffs and bill summary table on all bundled customer bills, with each utility submitting a Tier 3 Advice Letter by August 31, 2020, to implement the joint proposal by the last business day of 2021.

- **Analysis**: D.20-03-019 increases the transparency between bundled and unbundled customers' bills and is beneficial for the CCAs overall.
- **Next Steps**: A proposed decision is anticipated to be issued soon on issues addressed by Working Group 2, and a proposed decision regarding Working Group 3 is expected in Q3 2020.
- **Additional Information**: UCAN Motion for evidentiary hearing (April 3, 2020); POC Motion for evidentiary hearing (April 3, 2020); D.20-03-019 on departing load forecast and presentation of the PCIA (April 6, 2020); Ruling modifying procedural schedule for working group 3 (January 22, 2020); D.20-01-030 denying rehearing of D.18-10-019 as modified (January 21, 2020); Ruling modifying procedural schedule (January 15, 2020); Working Group 2 Final Report (December 9, 2019); AL 5705-E (December 2, 2019); D.19-10-001 (October 17, 2019); Phase 2 Scoping Memo and Ruling (February 1, 2019); D.18-10-019 Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); D.18-09-013 Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. R.17-06-026.

## PG&E's 2019 ERRA Compliance

On April 2, 2020, Joint CCAs and the Public Advocates Office separately filed protests of PG&E's 2019 ERRA Compliance application. PG&E filed supplemental testimony on April 13, 2020. On April 16, 2020, the ALJ issued an E-mail Ruling setting a prehearing conference.

- **Background**: ERRA compliance review proceedings review the utility's compliance in the preceding year regarding energy resource contract administration, least-cost dispatch, fuel procurement, and the PABA balancing account (which determines the true up values for the PCIA each year). In its 2019 ERRA compliance application, PG&E requested that the CPUC find that its PABA entries for 2019 were accurate, it complied with its Bundled Procurement Plan in 2019 in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, RA sales, and least-cost dispatch of electric generation resources. PG&E also requests that the CPUC find that during the record period PG&E managed its utility-owned generation facilities reasonably. Finally, PG&E requests cost recovery of revenue requirements totaling about $4.0 million for Diablo Canyon seismic study costs.
- **Details**: PG&E's supplemental testimony (1) describes PG&E's PSPS Program and when it was used in 2019; (2) provides an accounting of the 2019 PSPS events, including a description of how balancing accounts forecast in PG&E's annual ERRA Forecast proceeding and reviewed in the 2019 ERRA Compliance Review proceeding may have been impacted and; (3) describes the difference between load forecasting for ratemaking purposes and load forecasting for PSPS events.

  A prehearing conference followed by the issuance of a scoping memo and ruling are anticipated to be the next steps in this proceeding.
- **Analysis**: This proceeding addresses PG&E's PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues from PG&E's generation fleet, which impact the level of the PCIA. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner.
- **Next Steps**: A prehearing conference is scheduled for May 12, 2020.
- **Additional Information**: E-mail Ruling setting prehearing conference (April 16, 2020); Resolution on category and need for hearing (March 12, 2020); PG&E's Application and Testimony (February 28, 2020); Docket No. A.20-02-009.

## PG&E's 2020 ERRA Forecast

On March 30, 2020, PG&E filed an Application for Rehearing of D.20-02-047, which was the final decision issued in this proceeding. Joint CCAs filed a response to PG&E's Application for Rehearing on April 14, 2020. A group of CCAs including VCE filed a protest of PG&E's AL 5781-E, which implements D.20-02-047. Later in April, PG&E filed AL 5661-E and additional supplemental advice letters that implement PG&E's 2020 Annual Electric True-Up.

- **Background**: ERRA forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates. In this proceeding, D.20-02-047 approved a 2020 ERRA revenue requirement of $3.014 billion and a PCIA revenue requirement of $3.056 billion. It also adopted a revision made to the original PD that deducted $92.9 million from the PABA balance, finding the 20% of starting bank RECs included in PG&E AL 5554-E should not be counted as unsold RPS.

  AL 5781-E, which was protested by a group of CCAs including VCE, reports a $130 million variance between the forecast adopted in D.20-02-047 and the advice letter, meaning the indifference amount and PCIA rates increase based on the true-up of Q4. AL 5781-E also shows PG&E under-recovering $409.4 million during the course of 2020 due to the capping of PCIA rates. The PUBA trigger mechanism at the 7% filing level is $112.5 million, and the 10% Trigger Threshold is $160.7 million. Energy Division issued a standard disposition letter approving AL 5781-E.

- **Details**: PG&E takes issue with the decision's discussion of Unsold RPS and requests that the CPUC revise D.20-02-047 to clarify that there are only annual RPS compliance *targets*, not annual compliance *requirements*. In addition, it requests a correction to the sales volumes calculations so that they are aligned with the methodology announced in the Decision. PG&E says it accepts the methodology in the decision that it cannot count any RPS volume as unsold if the volume results in PG&E's retained RPS being below the year's annual RPS compliance target. PG&E also says it accepts the deduction of $92.9 million from the Portfolio Allocation Balancing Account required by the Decision and does not seek to reverse the decision or use a different amount.

  Joint CCAs responded to PG&E's Application for Rehearing by objecting to the apparent motivation behind it, which they said was to relitigate the methodology for calculating Retained RPS energy in the 2019 ERRA Compliance proceeding (A.20-02-009), as well as to the substance of both of PG&E's specific requested changes, which it argued were unnecessary and relitigating conclusions already reached by the CPUC, respectively.

  AL 5661-E and subsequent supplemental advice letters implement PG&E's 2020 Annual Electric True-Up, including reflecting updated PCIA rates pursuant to the final decision in this proceeding and previously proposed to be implemented by PG&E through AL 5781-E. It results in a 9.0% increase in PG&E's system average rate.

- **Analysis**: The decision resulted in an uncapped system-average PCIA of $0.041/kWh for the 2017 vintage, but that uncapped rate rises to $0.04266/kWh under the Advice Letter. A capped rate of $0.0317/kWh for the 2017 vintage likely will be effective May 1, 2020, an increases from the current rate of $0.0267/kWh.

- **Next Steps**: PG&E's proposed rate changes went into effect as of May 1, 2020. This proceeding is now closed.

- **Additional Information**: PG&E AL 5661-E-C (April 30, 2020); PG&E AL 5661-E-B (April 28, 2020); PG&E AL 5561-E-A 2020 Annual Electric True-Up (April 22, 2020); PG&E Application for Rehearing (March 30, 2020); PG&E AL 5781-E implementing D.20-02-047 (March 13, 2020); D.20-02-047 (February 28, 2020); Scoping Memo and Ruling (August 22, 2019); Application

(June 3, 2019); Testimony available on PG&E's regulatory webpage (June 3, 2019); Docket No. A.19-06-001.

## RPS Rulemaking

Parties filed comments and reply comments on the Staff Proposal on the BioMAT proposal on April 1, 2020, and April 15, 2020, respectively. On April 17, 2020, parties filed reply comments on the Staff Proposal making changes to confidentiality rules regarding the RPS program.

- **Background**: This proceeding addresses ongoing RPS issues. VCE filed its 2019 RPS Procurement Plan on June 21, 2019, and its 2018 RPS Compliance Report on August 1, 2019. D.19-12-042, issued December 2019, required VCE to file an updated 2019 RPS Procurement Plan. VCE did so, and its final report was accepted by the Energy Division.

  On February 27, 2020, the CPUC issued a Ruling requesting comments on a Staff Proposal making changes to confidentiality rules regarding the RPS program. Among other proposals, the Energy Division has proposed to make CCAs' RPS procurement contract terms (e.g., price, quantity, resource type, location, etc.) publicly available 30 days after deliveries begin. The contract price would also be publicly available six months after a contract is signed (if that occurs sooner than 30 days after deliveries begin).

  The BioMAT is a feed-in tariff available for up to 250 MW of small bioenergy projects (5 MW or less) that uses a market-based mechanism to arrive at the contract price. The BioMAT Staff Proposal would extend the end date for the program from February 2021 to December 31, 2025. It would also allocate the net costs via a non-bypassable charge to all customers and allow all LSEs to enter into contracts at the offer price and collect their expenses through the same charge.

  **Details**: The BioMAT Staff Proposal would extend the end date for the program from February 2021 to December 31, 2025. It would also allocate the net costs via a non-bypassable charge to all customers and allow all LSEs to enter into contracts at the offer price and collect their expenses through the same charge.

- **Analysis**: The Staff Proposal on the BioMAT program, if adopted, could impact VCE customer rates, as the program and associated cost recovery through a non-bypassable charge would be extended through 2025. In addition, it would allow VCE to directly enter into BioMAT contracts.

  The Staff Proposal on RPS confidentiality rules include provisions that, if adopted, would result in VCE being required to provide more transparency on various RPS information, such as RPS PPA pricing and other contract information.

  Other issues to be addressed in this proceeding could further impact future RPS compliance obligations, such as potentially allowing LSEs like VCE to forgo filing a separate RPS Procurement Plan in 2022 by using its 2022 IRP filing instead.

- **Next Steps**: The 2020 RPS Procurement Plan is due June 21, 2020, and the 2019 RPS Compliance Report is due August 1, 2020.

  In 2020, the Energy Division is developing a proposal (potentially including workshops or working groups) on integrating the IRP and RPS Procurement Plan filings, but the possibility of combining these filings will not occur prior to 2022, per D.19-12-042.

- **Additional Information**: CalCCA Comments on RPS confidentiality (March 30, 2020); Ruling requesting comments on BioMAT (March 10, 2020); D.20-02-040 correcting D.19-12-042 on 2019 RPS Procurement Plans (February 21, 2020); Ruling on RPS confidentiality and transparency issues (February 27, 2020); D.19-12-042 on 2019 RPS Procurement Plans (December 30, 2019); D.19-06-023 on implementing SB 100 (May 22, 2019); Ruling extending procedural schedule (May 7, 2019); Ruling identifying issues, schedule and 2019 RPS Procurement Plan requirements (April 19, 2019); D.19-02-007 (February 28, 2019); Scoping Ruling (November 9, 2018); Docket No. R.18-07-003.

## PG&E's Phase 1 GRC

No updates this month.

- **Background**: PG&E's three-year GRC covers the 2020-2022 period. For 2020, it has requested an additional $1.058 billion (from $8.518 billion to $9.576 billion), or a 12.4% increase over its 2019 authorized revenue requirement, comprised of increases related to its gas distribution ($2.097 billion total, or a $134 million increase), electric distribution ($5.113 billion total, or a $749 million increase), and generation ($2.366 billion total, or a $175 million increase) services. If approved, it would increase a typical monthly residential electric (500 kWh) and natural gas (34 therms) customer bill by $10.57, or 6.4%, comprised of an electric bill increase of $8.73 and a gas bill increase of $1.84. For 2021 and 2022, PG&E requested total increases of $454 million and $486 million, respectively. PGE's GRC does not include a request for cost recovery related to 2017 and 2018 wildfire liabilities.

  The Settlement Agreement, filed December 30, 2019, would result in an increase in PG&E's 2020 revenue requirement of $575 million (*i.e.*, $483 million lower than PG&E's original request), with additional increases of $318 million, or 3.5% in 2021, and $367 million, or 3.9%, in 2022. The Settlement Agreement would result in PG&E withdrawing its proposal for a non-bypassable charge related to its hydroelectric facilities. It would require PG&E to develop new and enhanced reporting to provide increased visibility into the work it performed. It also provides for PG&E's ability to purchase insurance coverage up to $1.4 billion to protect against wildfire risk and other liabilities, reflected in PG&E's forecast as a cost of $307 million. The consolidated 2020 electric and gas bill impact would be 3.4%.

- **Details**: N/A.

- **Analysis**: PG&E's GRC proposals include shifting substantial costs associated with its hydroelectric generation from its generation rates (applicable only to its bundled customers) into a non-bypassable charge affecting all of its distribution customers, including VCE customers, which would negatively affect the competitiveness of VCE's rates relative to PG&E's. However, that proposal would be withdrawn if the Settlement Agreement is approved. The remaining CCA-related issues in the case include the Joint CCAs' recommendations that the Commission:
  - Revise the allocation of certain customer-service costs since unbundled customers use those services far less than bundled customers.
  - Ensure CCAs can connect clean generation to PG&E's temporary microgrids during PSPS events.
  - Revise the settlement's exorbitant decommissioning costs for PG&E's PCIA-eligible facilities.
  - Revise the settlement to ensure grid modernization data is accessible to CCAs to ensure a level playing field in the provision of grid services.

- **Next Steps**: The ALJs will issue a proposed decision.

- **Additional Information**: Joint CCAs' PG&E Motion for Official Notice of Facts (January 27, 2020); Joint Motion for Settlement Agreement (January 14, 2020); E-Mail Ruling granting oral argument (January 6, 2020); E-Mail Ruling modifying procedural schedule (December 2, 2019); E-Mail Ruling suspending briefing deadlines (November 25, 2019); D.19-11-014 (November 14, 2019); Ruling setting public participation hearings (May 7, 2019); Scoping Memo and Ruling (March 8, 2019); Joint CCAs' Protest (January 17, 2019); Application and PG&E GRC Website (December 13, 2018); Docket No. A.18-12-009.

## PG&E's Phase 2 GRC

On April 10, 2020, PG&E filed the IOUs' Final Essential Usage Study (EUS) Plan. PG&E held workshops on April 14-15, 2020, on its proposals for marginal cost and revenue allocation. On April 27, 2020, the ALJ issued an E-mail Ruling that granted a PG&E request for an extension to file updated testimony and for parties' responsive testimony.

- **Background**: PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. PG&E's pending Phase 1 GRC (filed in December 2018 via a separate proceeding) will set the revenue requirement that will carry through to the rates ultimately adopted in this proceeding.

  In this proceeding, PG&E seeks modifications to its rates for distribution, generation, and its public purpose program (PPP) non-bypassable charge. PG&E proposes to implement a plan to move all customer classes to their full cost of service over a six-year period (the first three years of which are covered by this GRC Phase 2) via incremental annual steps. PG&E proposes to use marginal costs for purposes of revenue allocation and to adjust distribution one-sixth of the way to full cost of service each year over a six-year transition period.

  Of note, PG&E is proposing changes to the DA/CCA event-based fees that were not updated in the 2017 Phase 2 GRC proceeding. In addition, PG&E proposes to remove the PCIA revenue from bundled generation revenue and allocate that cost separately to bundled customers, collecting the PCIA from bundled customers on a non-time differentiated, per-kWh basis (i.e., the same way it is collected from DA/CCA customers). PG&E will continue to display the PCIA with other generation charges on customer bills, but will unbundle the PCIA as part of unbundled charges in each rate schedule.

- **Details**: PG&E's final EUS plan describes how the IOUs' study will identify the essential usage of electricity for the IOUs' residential customers. The EUS will determine what constitutes essential usage for residential customers (*e.g.*, cooking, lighting, space conditioning) in the different IOU service territories and climate zones. The apparent use case is that essential service be reflected in the Tier I baseline quantities.

- **Analysis**: This proceeding may not impact the transparency between a bundled and unbundled customer's bills because of the Working Group 1 proposed decision discussed in the PCIA docket below. However, it will affect the allocation of PG&E's revenues requirements among VCE's different rate classes. It will also affect distribution and PPP charges paid by VCE customers to PG&E. Further, PG&E includes a cost-of-service study the purpose of which is to establish the groundwork for separating net metering customers into a separate customer class in the utility's next rate case. If PG&E's proposed CCA fee revisions are adopted, it will increase the cost VCE pays to PG&E for various services.

- **Next Steps**: Opening and reply comments on the final EUS proposal, respectively, are due May 11 and May 26, 2020. The schedule for general issues in this proceeding includes the following key dates: PG&E serves updated testimony on May 15, 2020; and intervenor direct testimony is due October 9, 2020. A CPUC decision is anticipated for September 2021.

- **Additional Information**: Scoping Memo and Ruling (February 10, 2020); E-mail Ruling extending Protest deadline (December 3, 2019); Application, Exhibit (PG&E-1): Overview and Policy, Exhibit (PG&E-2): Cost of Service, Exhibit (PG&E-3): Revenue Allocation, Rate Design and Rate Programs, and Exhibit (PG&E-4): Appendices (November 22, 2019); Docket No. A.19-11-019.

## Direct Access Rulemaking

No update this month. On March 24, 2020, the ALJ informed parties that the release of Energy Division's report has been delayed. The procedural schedule will be updated accordingly following its release.

- **Background**: Phase 1 issues were resolved on May 30, 2019. For Phase 2 of this proceeding, the CPUC will address the SB 237 mandate requiring the CPUC to, by June 1, 2020, provide recommendations to the Legislature on "implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory." The Commission is required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies.
- **Details**: The Energy Division held a workshop on January 8, 2020, and accepted post-workshop informal comments and reply comments on January 21, 2020 and January 27, 2020, respectively.
- **Analysis**: This proceeding will impact the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California, including a potential lifting of the existing cap on nonresidential DA transactions altogether. Further expansion of DA in California could result in non-residential customer departures from VCE and make it more difficult for VCE to forecast load and conduct resource planning. CalCCA has argued that further expansion of nonresidential DA is likely to adversely impact attainment of the state's environmental and reliability goals, and will result in cost-shifting to both bundled and CCA customers.
- **Next Steps**: A report containing the Energy Division's draft recommendations to the Legislature will be published in the near future, which will be followed by a ruling updating the procedural schedule. There will be an opportunity for comments on the report, followed by a proposed decision.
- **Additional Information**: Amended Scoping Memo and Ruling adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. R.19-03-009; *see also* SB 237.

## Wildfire Cost Recovery Methodology Rulemaking

No updates this month. An August 7, 2019, PG&E Application for Rehearing remains pending regarding the CPUC's recent Decision establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay (D.19-06-027).

- **Background**: SB 901 requires the CPUC to determine, when considering cost recovery associated with 2017 California wildfires, that the utility's rates and charges are "just and reasonable." In addition, and notwithstanding this basic rule, the CPUC must "consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

  D.19-06-027 found that the Stress Test cannot be applied to a utility that has filed for Chapter 11 bankruptcy protection (i.e., PG&E) because under those circumstances the CPUC cannot determine essential components of the utility's financial status. In that instance, a reorganization plan will inevitably address all pre-petition debts, include 2017 wildfire costs, as part of the bankruptcy process. The framework proposed for adoption in the PD is based on an April 2019 Staff Proposal, with some modifications. The framework requires a utility to pay the greatest amount of costs while maintaining an investment grade rating. It also requires utilities to propose ratepayer protection measures in Stress Test applications and establishes two options for doing so.

  PG&E's application for rehearing challenges the CPUC's prohibition on applying the Stress Test to utilities like itself that have filed for Chapter 11 bankruptcy. PG&E's rationale is that SB 901 requires the CPUC to determine that the stress test methodology to be applied to all IOUs. Several parties filed responses to PG&E's application for rehearing disagreeing with PG&E.
- **Details**: N/A.

- **Analysis**: This proceeding established the methodology the CPUC will use to determine, in a separate proceeding, the specific costs that the IOUs (other than PG&E) may recover associated with 2017 or future wildfires.
- **Next Steps**: The only matter remaining to be resolved in this proceeding is PG&E's application for rehearing. This proceeding is otherwise closed.
- **Additional Information**: PG&E Application for Rehearing (August 7, 2019); D.19-06-027 (July 8, 2019); Assigned Commissioner's Ruling releasing Staff Proposal (April 5, 2019); Scoping Memo and Ruling (March 29, 2019); Order Instituting Rulemaking (January 18, 2019); Docket No. R.19-01-006. *See also* SB 901, enacted September 21, 2018.

## Investigation into PG&E's Organization, Culture and Governance (Safety OII)

No updates this month.

- **Background**: On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.

  In June 2019, D.19-06-008 ordered PG&E to report on the safety experience and qualifications of the PG&E Board of Directors and establishes an advisory panel on corporate governance. The brief Decision required PG&E to provide a variety of information on each PG&E and PG&E Corporation Board member involving safety training, related work experience, previous positions held, and current professional commitments.
- **Details**: N/A.
- **Analysis**: This proceeding could have a range of possible impacts on CCAs within PG&E's territory and their customers, given the broad issues under investigation pertaining to PG&E's corporate structure and governance.
- **Next Steps**: TBD.
- **Additional Information**: Ruling on proposals to improve PG&E safety culture (June 18, 2019); D.19-06-008 directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); Scoping Memo (December 21, 2018); Docket No. I.15-08-019.

## Wildfire Fund Non-Bypassable Charge (AB 1054)

No updates this month.

- **Background**: This rulemaking implemented AB 1054 and extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The scope of this proceeding was limited to consideration of whether the CPUC should authorize ratepayer funding of the Wildfire Fund established by AB 1054, enacted in July 2019, via the continuation of an existing non-bypassable charge (Department of Water Resources bond charge) that would have otherwise expired by the end of 2021. On August 26, 2019, the Bankruptcy Court tentatively granted PG&E's request to participate in the Wildfire Fund.

  D.19-10-056, issued in October 2019, approved the establishment of a non-bypassable charge on IOU customers to provide revenue for the newly established state Wildfire Fund pursuant to 2019 AB 1054. The charge will only be assessed on customers of utilities that participate in the Wildfire Fund (i.e., PG&E, SCE, and SDG&E), and will expire at the end of 2035. The Decision also provides that once a large IOU commits to Wildfire Fund participation, it may not later revoke its participation. The annual revenue requirement for the charge among the large IOUs will total $902.4 million, allocated at $404.6 million for PG&E, $408.2 million for SCE, and $89.6 million for SDG&E. (There is a June 30, 2020, deadline for PG&E to satisfactorily complete its insolvency proceeding under AB 1054, and therefore become eligible to participate in the Wildfire Fund.) The Wildfire Fund NBC will be collected on a $/kWh basis, with the revenue requirement allocated based on each class's share of energy sales. Residential CARE and medical baseline customers are exempt. The Wildfire Fund NBC cannot take effect until the DWR Bond charge sunsets, which may take place as early as the second half of 2020.

- **Details**: N/A.
- **Analysis**: This proceeding established a new non-bypassable charge on VCE customers beginning as early as the second half of 2020 to fund the Wildfire Fund under AB 1054. Whether customers in PG&E's territory will be subject to the charge will be determined only after its Bankruptcy proceeding is complete. D.19-10-056 kept the proceeding open to later consider the annual revenue requirement and sales forecast for the Wildfire Fund non-bypassable charge in 2020.
- **Next Steps**: The non-bypassable charge will go into effect as early as the second half of 2020.
- **Additional Information**: D.20-02-070 denying Application for Rehearing (March 2, 2020); D.19-10-056 approving a non-bypassable charge (October 24, 2019); Scoping Memo and Ruling (August 14, 2019); Order Instituting Rulemaking (August 2, 2019); Docket No. R.19-07-017. *See also* AB 1054.

## Other Regulatory Developments

- **CPUC to Open New IRP Proceeding**: The CPUC will consider opening a new IRP rulemaking by issuing an Order Instituting Rulemaking at its May 7, 2020, meeting. The new proceeding would address IRP planning and procurement issues going forward and close the existing IRP rulemaking. Notably, the planning period will now move beyond 2030 and cover up to at least 2035. The proceeding would be divided into two concurrent tracks: (1) a Planning Track, and (2) a Procurement Track. The first priority of the Planning Track is establishing the Preferred System Portfolio based on individual IRPs to be filed by LSEs in September. The OIR also indicates this proceeding will be the "umbrella venue" for addressing coordination on a number of issues including resource adequacy, energy efficiency, demand response, renewables, storage, transmission, and conventional generation resources.
- **CPUC Issues Proposed Decision on De-Energization**: The CPUC issued a Proposed Decision for adopting revised guidelines governing PSPS, or "de-energization" events. Comments on the PD are due May 18, replies are due May 25, and the PD may be adopted, at earliest, at the May 28 CPUC meeting. The PD adopts, with modifications, revised guidelines initially proposed in a January 2020 Ruling. Also recently, a joint group of parties filed joint Motion for an emergency order adopting PSPS protocols during the COVID-19 pandemic for circumstances where an Emergency Order or shelter-in-place order is in effect.
- **CPUC Issues Proposed Decision on Track 1 Microgrids**: The CPUC issued a Proposed Decision in Track 1 of its microgrid rulemaking (R.19-09-009), which addresses actions that would support immediate improvements in resiliency. The PD adopts a series of proposals developed in an earlier Staff White paper and also addresses resiliency programs proposed by SDG&E and PG&E. Comments on the PD are due May 19, replies are due May 25, and the PD may be adopted, at earliest, at the June 11 CPUC meeting.
- **CCAs Appeal Large CPUC Fines for RA Violations**: East Bay Community Energy and San Jose Clean Energy filed applications appealing citations of more than $600,000 and $1.1 million, respectively, assessed by the CPUC Consumer Protection and Enforcement Division related to non-compliance with year-ahead resource adequacy requirements (K.20-04-006 and K.20-04-005).

- **PG&E Files Application for $7.5 Billion in Recovery Bonds**: In an application filed on April 30, 2020, PG&E requested the CPUC: (1) apply the Stress Test Methodology adopted by the CPUC in D.19-06-027; and (2) determine that $7.5 billion of 2017 catastrophic wildfire costs and expenses are Stress Test Costs that may be financed through the issuance of recovery bonds, as provided by SB 901 (A.20-04-023).
- **CPUC Grants Extension for 2021 ERRA Forecast Application**: On April 16, 2020, PG&E requested an extension of time to file its 2021 ERRA Forecast application from June 1, 2020, to July 1, 2020. That extension was granted.

## Glossary of Acronyms

| | |
|---|---|
| **AB** | Assembly Bill |
| **AET** | Annual Electric True-up |
| **ALJ** | Administrative Law Judge |
| **BioMAT** | Bioenergy Market Adjusting Tariff |
| **BTM** | Behind the Meter |
| **CAISO** | California Independent System Operator |
| **CAM** | Cost Allocation Mechanism |
| **CARB** | California Air Resources Board |
| **CEC** | California Energy Commission |
| **CPUC** | California Public Utilities Commission |
| **CTC** | Competition Transition Charge |
| **DA** | Direct Access |
| **GRC** | General Rate Case |
| **ELCC** | Effective Load Carrying Capacity |
| **ERRA** | Energy Resource and Recovery Account |
| **EUS** | Essential Usage Study |
| **IEPR** | Integrated Energy Policy Report |
| **IFOM** | In Front of the Meter |
| **IRP** | Integrated Resource Plan |
| **IOU** | Investor-Owned Utility |
| **ITC** | Investment Tax Credit |
| **LSE** | Load-Serving Entity |
| **MCC** | Maximum Cumulative Capacity |
| **PABA** | Portfolio Allocation Balancing Account |
| **PD** | Proposed Decision |
| **PG&E** | Pacific Gas & Electric |
| **PFM** | Petition for Modification |
| **PCIA** | Power Charge Indifference Adjustment |
| **PSPS** | Public Safety Power Shutoff |

| | |
|---|---|
| **PUBA** | PCIA Undercollection Balancing Account |
| **QC** | Qualifying Capacity |
| **RA** | Resource Adequacy |
| **RDW** | Rate Design Window |
| **RPS** | Renewables Portfolio Standard |
| **SCE** | Southern California Edison |
| **SED** | Safety and Enforcement Division (CPUC) |
| **SDG&E** | San Diego Gas & Electric |
| **TCJA** | Tax Cuts and Jobs Act of 2017 |
| **TURN** | The Utility Reform Network |
| **UOG** | Utility-Owned Generation |
| **WMP** | Wildfire Mitigation Plan |
| **WSD** | Wildfire Safety Division (CPUC) |

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 8**

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: May 14, 2020

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Pacific Policy Group, VCE's lobby services consultant, continues to work with Staff and the Community Advisory Committee's Regulatory and Legislative Task Group on numerous legislative bills.

The Legislature has returned from its unscheduled recess in response to COVID-19 and is back to work in Sacramento. The Assembly returned on May 4 and the Senate returned on May 11, but the Capitol building is still largely empty. Physical distancing measures being employed by both houses of the Legislature prohibit in person meetings with Legislators and restrict staff to only one physically present staff per legislator per day. While committees are conducting hearings, the number of bills being considered has largely been reduced as direction from leadership and committee chairs is that only those bills that relate to COVID-19 response, wildfires or homelessness should be pursued. The Senate Energy, Utilities & Communications Committee will conduct its one and only hearing on May 14 and the Assembly Utilities & Energy Committee will hold its sole hearing on May 20, but neither committee has noticed which bills will be considered at the time this report was drafted.

Lastly, a tentative agenda for the remainder of the legislative session has been released to reset deadlines and timelines to account for the unscheduled recess. The agenda is as follows:

**<u>Senate</u>**

- The Policy deadline that was April 24 will now be May 29.
- The Fiscal deadline that was May 29 will now be June 19.
- The House of Origin deadline will now be June 26.
- The Senate will take a one week recess from July 3 through July 12, returning to session on July 13.

**<u>Assembly</u>**

- The Assembly House of Origin deadline will be June 19.
- The Assembly will take a three-week recess starting June 19 and continuing through July 12, returning to session on July 13.

After July 13, the calendars of the Senate and the Assembly will be harmonized. All of these revised dates are proposed and will need to be approved.

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 9**

**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager, VCEA

**SUBJECT:** Customer Enrollment Update (Information)

**DATE:** May 14, 2020

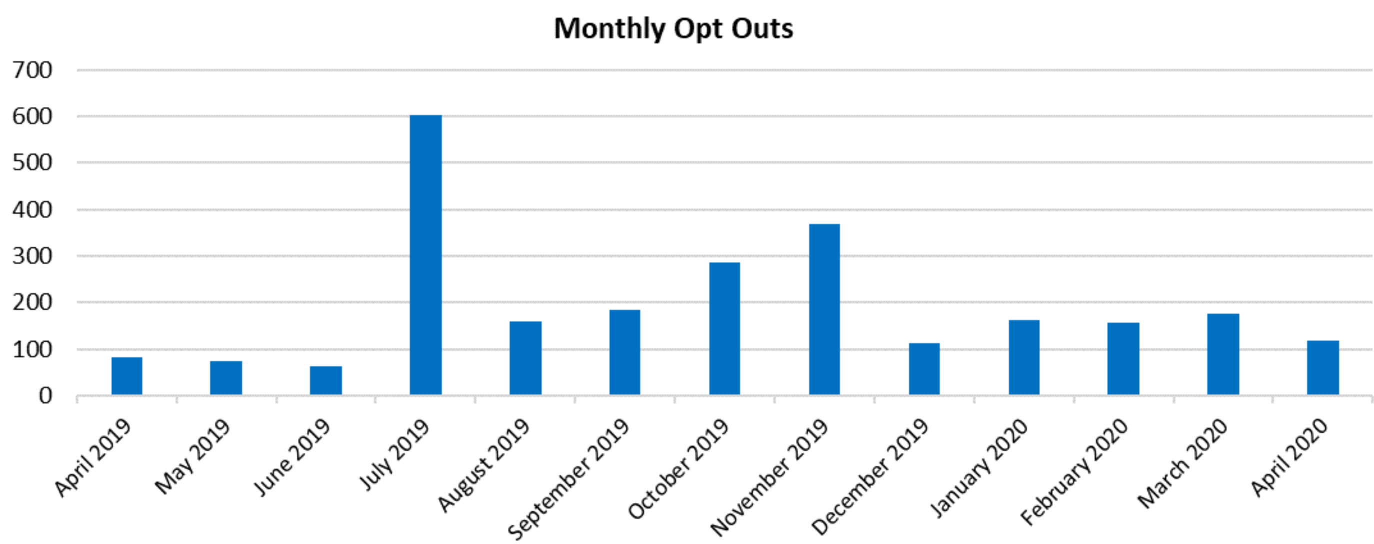
## RECOMMENDATION

Receive and review the attached Customer Enrollment update as of May 6, 2020.

# Item 10 - Enrollment Update

| | Davis | Woodland | Yolo Co | Total | Ag | Commercial | Industrial | Residential |
|---|---|---|---|---|---|---|---|---|
| **VCEA customers** | 26,240 | 19,306 | 10,117 | 55,663 | 1,807 | 5,781 | 5 | 48,070 |
| **Eligible customers** | 27,951 | 22,305 | 11,806 | 62,062 | 2,124 | 6,439 | 6 | 53,493 |
| **Participation Rate** | 94% | 87% | 86% | 90% | 85% | 90% | 83% | 90% |

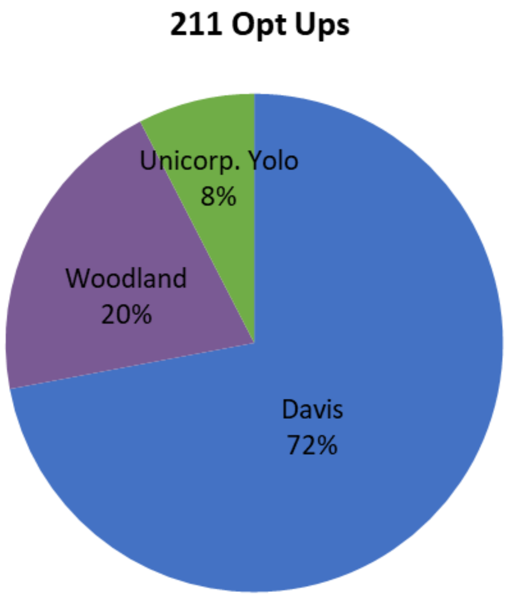
- There are currently 3,558 NEM customers not included in this table.  They will enroll throughout the remainder of 2020.

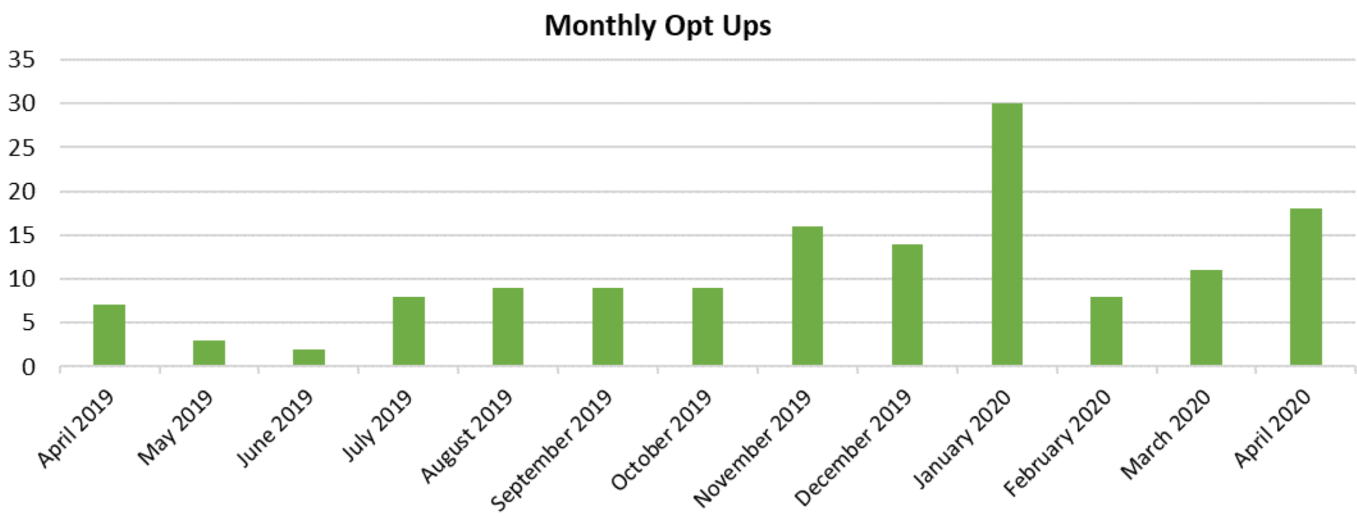



Status Date: 5/6/20

VALLEY CLEAN ENERGY

# Item 10 - Enrollment Update






Status Date: 5/6/20

**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 10**

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TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Community Advisory Committee April 23, 2020 Special Meeting Summary

DATE: May 14, 2020

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This report summarizes the Community Advisory Committee's special meeting held on Thursday, April 23, 2020 at 5 p.m.

A. **Task Group Reports and 4/9/20 Board Meeting Recap:** Members provided brief status reports on the task groups formed. Interim General Manager Mitch Sears provided a recap of the April 9, 2020 special Board meeting, a status report on how other Community Choice Aggregates (CCAs) are handling Pacific Gas & Electric's offer of Greenhouse gas (GHG)-free attributes; and, how collectively CCAs through CalCCA are handling issues as the result of the Covid-19 crisis.

B. **Reviewed potential policy options for the Board's future consideration to address future fiscal impacts:** Mr. Sears reviewed policy options background; policy options that the Board will be using to forecast revenue deficit; an overview and upcoming key dates; preliminary operating budget for fiscal year 2020-2021; and forecast. Mr. Sears asked that the CAC provide feedback to Staff to help inform the Board on making decision in line with adopting the operating budget in June.

C. **Overview of NEM-Credit Donation program:** Director of Customer Care and Marketing presented an overview of a preliminary proposed NEM Credit Donation program. He received input from the CAC members and will incorporate those into the draft.

D. **Update on VCE's responses to Covid-19 and potential impacts:** Mr. Sears provided an update on what VCE has been doing in response to the Covid-19 crisis.

E. **Task Groups' 2020 "Charge" (Tasks/Projects):** The CAC reviewed and approved the Task Groups list of projects or "charge" for 2020.

F. **Announcements:** Chairperson Yvonne Hunter informed those present that CAC Members Gerry Braun and Lorenzo Kristov, along with resident Richard McCann are receiving the 2020 Environmental Recognition Award from the City of Davis.

**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 11**

| | |
|---|---|
| **TO:** | Valley Clean Energy Alliance Board of Directors |
| **FROM:** | Mitch Sears, Interim General Manager<br>Gordon Samuel, Assistant General Manager & Director of Power Services |
| **SUBJECT:** | Indian Valley Hydro Facility Power Purchase Agreement Approval |
| **DATE:** | May 14, 2020 |

**RECOMMENDATION**

Staff recommends the Board adopt a resolution that:

1. Approves the Power Purchase Agreement (PPA) by VCEA for 100% of the output for five (5) years of the Indian Valley Hydro Facility owned and operated by the Yolo County Flood Control & Water Conservation District (YCFCWCD).
2. Authorize the Interim General Manager to execute the PPA substantially in the form attached and authorize the Interim General Manager, in consultation with General Counsel, to make minor changes to the PPA so long as the term and price are not changed.

**BACKGROUND**

Since June 1, 2018, Valley Clean Energy (VCE) began receiving energy from the Indian Valley Hydro Facility through a PPA between Sacramento Municipal Unified District (SMUD) and YCFCWCD, which will terminate May 31, 2020. The roughly 3MW facility generates on average 4,000-5,000 MWhs per year (depends on reservoir levels), which accounts for approximately 1% of VCE load. The facility is located in nearby Lake County and serves the agricultural community in Yolo County.

The YCFCWCD Board approved this PPA on May 5, 2020.

**NEW PPA TERMS**

The PPA is essentially an extension of the prior version. Below are some of the primary terms:

- Agreement is between VCE and YCFCWCD, whereas prior PPA SMUD had an agreement with YCFCWCD
- New PPA is for five (5) years (6/1/2020-5/31/2025), prior PPA was a two (2) year agreement

- Pricing terms similar to prior PPA and remain constant through the term of the agreement
- SMUD will act as the scheduling coordinator on behalf of VCE
- VCE will receive the resource adequacy (RA) attributes
- Includes provisions for parties to extend agreement for an additional 5 years
- With proper notice, YCFCWCD does have a right to terminate to pursue a more lucrative CPUC governed program if one were to materialize

**CONCLUSION**

Although this facility only accounts for a small percentage of VCE's needs it does provide some resource diversity, supports the local economy and serves a key customer group of VCE's – agriculture.

**Attachments**

A. **Power Purchase Agreement**
B. **Resolution**

**Attachment A**

**Indian Valley Hydro Facility Power Purchase Agreement**

**INDIAN VALLEY HYDRO PROJECT**

**SHORT TERM RENEWABLE POWER PURCHASE AGREEMENT**

**BETWEEN**

**VALLEY CLEAN ENERGY ALLIANCE**

**AND**

**YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

This SHORT TERM RENEWABLE POWER PURCHASE AGREEMENT (the "**Agreement**") is made and entered into on May **_____**, 2020 (the "**Effective Date**") by and between Valley Clean Energy Alliance ("**Buyer**"), a California Joint Powers Authority, and Yolo County Flood Control and Water Conservation District ("**Seller**"), a California Special District. Buyer and Seller are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

A. Seller is a flood control and irrigation district in the business of providing water for agricultural irrigation customers within the county of Yolo, California.

B. Buyer is a community choice aggregator in the business of purchasing wholesale electric power supply for the customers within its service area.

C. Seller owns a 2.9 MW (net) renewable small hydroelectric generation facility that is a CEC Certified Eligible Renewable Energy Resource located at the dam on the Indian Valley reservoir in Lake County, which is interconnected to the CAISO Balancing Authority Area (the "**Project**"), is associated with Seller's water supply operations, and which has an annual average Energy production of 6,445 MWhs.

D. Buyer wishes to purchase and secure a reliable short-term source of renewable power (Energy, Capacity Attributes, and Green Attributes) to fulfill a portion of its renewable energy and Capacity needs.

E. Seller desires to sell, and Buyer desires to purchase all Product (as defined herein) that is produced from the Project during the Term (as defined herein), in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. DEFINITIONS

In addition to definitions of other terms appearing elsewhere in this Agreement, the following terms, when used herein, whether in the singular or in the plural, shall have the meanings specified:

1.1 "**Agreement**" shall have the meaning given to it in the preamble of this Agreement.

1.2 "**Attestation and Bill of Sale**" means documentation acceptable to Buyer which identifies the transfer of RECs from Seller to Buyer.

1.3 "**Business Day**" means any Monday through Friday, inclusive, but excluding Days that are observed as business holidays by either Party or that are NERC Holidays.

1.4 "**CAISO**" means the California Independent System Operator Corporation or its successor.

1.5 "**CAISO Balancing Authority Area**" means the system of transmission lines and associated facilities that is operated by the CAISO and for which the CAISO has operational control and responsibility for system reliability.

1.6 "**CAISO Revenue Meter**" means that meter used by the CAISO to determine the amount of Energy produced by the Project for which the CAISO shall give credit toward the delivery of any generation Schedules from the Project or toward payment for positive Imbalance Energy.

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

1.8 "**Compliance Showings**" means Buyer's compliance with the Resource Adequacy obligations of the CPUC for an applicable Showing Month.

1.9 "**CPUC**" means the California Public Utilities Commission or its successor.

1.10 "**Capacity**" means the ability of a generator at any given time to produce Energy at a specified rate ("Real Power") as measured in megawatts ("MW") or kilowatts ("kW"), and any reporting rights associated with such.

1.11 "**Capacity Attributes**" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the Capacity of the Project to produce energy or ancillary services, including, but not limited to, any accounting construct so that the full output of the Project may be counted toward a Resource Adequacy

Capacity requirement or any other measure by an entity invested with the authority under federal or state law, to require Load Serving Entities to procure, resource adequacy or other such products. Capitalized terms used in this definition that are not otherwise defined in this Agreement shall have the meaning ascribed to them in the relevant CAISO tariff, as modified or amended from time to time.

1.12 "**CEC**" means the California Energy Resources Conservation and Development Commission, also known as the California Energy Commission, or its successor agency.

1.13 "**CEC Certification**" or "**CEC Certified**" means that the CEC has certified that the Project is an ERR for purposes of the California Renewable Portfolio Standard and that Energy produced by the Project qualifies as generation from an ERR consistent with CEC standards and protocols.

1.14 "**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy.

1.15 "**DA PNode LMP**" means the Day-ahead LMP applicable to the PNode at the Delivery Point for the relevant hour. The Project PNode is INDIANV_7_B1.

1.16 "**Day**" means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 24:00 hours Pacific Prevailing Time (PPT) on the same calendar day.

1.17 "**Day Ahead**" means the twenty-four (24) hour time period prior to the Delivery Day.

1.18 "**Day Ahead Schedules**" means schedules placed and accepted by the CAISO in its Day Ahead Scheduling process (also known as the IFM).

1.19 "**Delivery-Day**" means any Day during which Energy is delivered or made available.

1.20 "**Delivery Point**" means the Project's Pnode on the CAISO grid, INDIANV_7_B1.

1.21 "**Delivery Term**" has the meaning set forth in Section 2.1 of this Agreement.

1.22 "**Distribution Service**" means service provided by the Host Electric Utility that utilizes the Host Electric Utility's Distribution System, either to deliver power to retail electric customers, or to transmit power from the Project to the Host Electric Utility's high voltage Transmission System.

1.23 "**Distribution System**" means the relatively low voltage wires, transformers and related equipment generally used by an electric utility to deliver electric power to retail customers (as opposed to using it to move bulk quantities of power between different electric utilities or from large electric generators to a Distribution System).

1.24 "**Effective Date**" means the date set forth in the preamble of this Agreement.

1.25 "**Eligible Renewable Energy Resource**" or "**ERR**" has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25471, as either code may be amended or supplemented from time to time.

1.26 "**Energy**" means the electrical energy generated by the Project and delivered to Buyer at the Delivery Point, with the voltage and quality required by the applicable transmission service provider and measured in megawatt hours (MWh) based on an integrated hour.

1.27 "**Energy Delivery**" means the Energy provided by Seller to Buyer, according to the scheduling protocols contained in Section 6 herein, quantified in MWhs.

1.28 "**FERC**" means the Federal Energy Regulatory Commission or any successor agency thereto.

1.29 "**Final Schedule(s)**" has the meaning set forth in Section 6.5 of this Agreement.

1.30 "**Forced Outage**" means any outage or reduction in the Capacity of the Project that is not due to a Planned Outage.

1.31 "**Force Majeure**" has the meaning set forth in Section 9.2.

1.32 "**Green Attributes**" means any and all credits, benefits, emissions reductions, environmental air quality credits, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Project and its displacement of conventional energy generation, whether existing now or arising in the future. 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 (C02), 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 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 these avoided emissions such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tags are accumulated on kWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include (i) any Energy, Capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, grants, reductions, or non-GHG allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental or green benefits, or (iv) emission reduction credits encumbered, used or created by the Project for compliance with or sale under local, state, or federal operating and/or air quality permits or programs. If Sel1er receives any tradable Green Attributes or RECs based on the GHG reduction benefits attributed to its fuel usage for the Project, then it shal1 provide Buyer with at least enough Green Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility, and further provide to Buyer any RECs or Green Attributes received in excess of zero net emissions. The term Green Attributes includes any other green credits or benefits recognized in the future and attributable to Energy generated by the Project during the Term, unless otherwise excluded herein. Any Green Attributes provided under this Agreement shall be documented by Renewable Energy Credits, or any other needed future representation of the environmental benefits of the Project output, the monthly cumulative total of which shall be provided to Buyer by way of WREGIS, Seller's Renewable Energy Credit Attestation and Bill of Sale, or other required future attestations.

1.33 "**Green Tag Purchaser**" means Buyer or any entity to which Buyer sells the Green Tag Reporting Rights associated with this Agreement.

1.34 "**Green Tag Reporting Rights(s)**" means the right of a Green Tag Purchaser to report the ownership of accumulated Green Attributes in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

1.35 "**Host Electric Utility**" means an electric utility that provides, at the general location of the Project, any of the following: electric transmission service, distribution service and/or retail electricity sales.

1.36 "**Hour Ahead**" means the period in any given day in advance of when Hour Ahead Schedules can be placed with the CAISO for any given trading hour.

1.37 "**Hour Ahead Schedule(s)**" means schedules placed with the CAISO in its Hour-Ahead Scheduling Process (HASP), the process conducted by the CAISO beginning at seventy-five (75) minutes prior to the trading hour.

1.38 "**IFM**" means the Integrated Forward Market as defined by the CAISO. This term is synonymous with "Day Ahead Market". Prices from the IFM are called "Day Ahead" prices.

1.39 "**Imbalance Energy**" has the meaning given in the CAISO Tariff, but with regard to the Project, is the difference in the Final Schedule and the sum of the Day Ahead Schedule and Hour Ahead Schedule for the Project and which can be either positive (generation greater than Scheduled) or negative (generation less than Scheduled).

1.40 "**Interconnection Agreements**" means all (a) Small Generator Interconnection Agreements, (b) Distribution Service Agreements, (c) Transmission Service Agreements, (d) Participating Generator Agreements, and (e) Metering Service Agreements (as each are defined in the CAISO Tariff) necessary for Seller to operate the Project and Energy to the Delivery Point in compliance with this Agreement.

1.41 "**Interconnection Facilities**" means all facilities and equipment between the Project and the Delivery Point, including any modifications, additions or upgrades that are necessary to physically interconnect the Project to the Delivery Point.

1.42 "**Interest Rate**" means the daily federal funds rate as published by the Federal Reserve Bank of the United States of America.

1.43 “**Inter SC Transaction**” means a transaction between Scheduling Coordinators of Energy, Ancillary Services, or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

1.44 “**Locational Marginal Price**” or “**LMP**” has the meaning given to it by the CAISO.

1.45 “**Monthly Energy Charge**” means the monthly payment obligation from Buyer to Seller to compensate Seller for all Energy, Capacity Attributes, and Green Attributes delivered by Seller pursuant to this Agreement.

1.46 “**MW**” means a unit of electricity measurement equal to 1,000 kilowatts.

1.47 “**NERC**” mean the North American Electric Reliability Corporation or any successor organization.

1.48 “**NERC Holiday**” means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and other holidays observed by NERC.

1.49 “**Net Qualifying Capacity**” or “**NQC**” has the meaning set forth in the Tariff.

1.50 “**Operating Reserves**” has the meaning given to it by the WECC.

1.51 “**Pacific Prevailing Time**” or “**PPT**” means the prevailing time of the Day in question in the pacific time zone (i.e., pacific standard time or pacific daylight time, as applicable).

1.52 “**Planned Outage**” means any outage causing reduction in Project Capacity that Seller plans for substantially in advance of when the outage is taken, such as periodic outages for regularly scheduled maintenance, major overhauls, and planned equipment replacement.

1.53 “**PNode**” means the Pricing Node (as defined in the CAISO Tariff).

1.54 “**Preschedule**” means an hourly Energy Schedule submitted during the applicable Prescheduling Day.

1.55 “**Prescheduling**” means the act of producing, or relating to the production of, a Preschedule.

1.56 “**Prescheduling Day**” means the Day accepted and established as the Prescheduling Day for delivering power in a particular subsequent Day in the WECC according to the most current WECC scheduling timelines.

1.57 “**Product**” means all of the Energy, Capacity Attributes, and Green Attributes and ancillary services produced by the Project during the Delivery Term and/or any reporting rights associated with any of the foregoing.

1.58 “**Project**” means the Indian Valley Hydro Project, FERC Project No. 4066, located on the Indian Valley Reservoir in Lake County, California at 4237 Access Road, Clearlake Oaks, CA 95423, from which the Energy, Capacity Attributes, and Green Attributes delivered hereunder shall be generated and Scheduled as applicable. The Project is certified by the CEC as an Eligible Renewable Energy Resource as a small hydroelectric project, CEC Renewable Project No.60161A. The Project's WREGIS registration number is W607.

1.59 "**Prudent Electrical Practices**" means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, and safety. Seller acknowledges that the use of Prudent Electrical Practices by Seller does not exempt Seller from any obligations set forth in this Agreement. Prudent Electrical Practices include, at a minimum, those professionally responsible practices, methods and acts described in the preceding paragraph that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of governmental authorities, WECC standards, the CAISO and applicable laws.

1.60 "**Reactive Power**" means imaginary power which does not result in real work and which can be present in alternating current systems as a result of a component of the electrical current which is 90 degrees out of phase with the applicable electrical potential or voltage. Reactive Power can be measured in megavolt amperes reactive ("MVAr") or kilovolt amperes reactive ("kVAr").

1.61 "**Real Power**" means Energy produced at a specified rate and which can be measured in megawatts ("MW") or kilowatts ("kW").

1.62 "**Renewable Energy Credit**" or "**REC**" means a certificate of proof that one unit of electricity was generated by an Eligible Renewable Energy Resource, as defined in Decision 08-08-028 of the CPUC, or as defined by the CPUC or applicable California law. The REC shall represent all renewable, environmental, and Green Attributes associated with electricity production by an Eligible Renewable Energy Resource. RECs are accumulated on a MWh basis and one REC represents the Green Attributes made available by the generation of 1,000 kWh from the Project. For purposes of this Agreement, the term REC shall be synonymous with the term green tag, green ticket, tradable renewable certificates, WREGIS Certificate or any other term used to describe the documentation that evidences the renewable, environmental, and Green Attributes associated with electricity production by an Eligible Renewable Energy Resource.

1.63 "**REC Attestation and Bill of Sale**" means the forms through which Seller documents and makes certain declarations with respect to the monthly total of RECs transferred to Buyer under this Agreement.

1.64 "**REC Value**" means $[redacted]/MWh.

1.65 "**Resource Adequacy**" or "**RA**" means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.10-04-012, R.11-10-023, R.14-10-010, and R.17-09-020 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff, taking into account any CPUC or CAISO process to establish or determine NQC.

1.66 "**Resource Adequacy Capacity**" has the meaning set forth in the Tariff.

1.67 "**Resource Adequacy Plan**" has the meaning set forth in the Tariff.

1.68 "**Revenue Meter**" means the revenue quality meter used by either the CAISO or applicable Host Electric Utility to measure the Energy at the Delivery Point, which is generated by the Project for settlement and billing purposes.

1.69 "**RPS-Certification**" means a finding by the CEC that the Project qualifies as an ERR for the purposes of the California RPS, and that all Energy produced by the Project qualifies as generation from an ERR, as is currently documented by WREGIS.

1.70 "**Schedule**" means any schedule for the delivery, production or use of Energy, Capacity, and/or transmission which complies with NERC scheduling (NERC tagging) requirements and the scheduling timelines specified in this Agreement, and if required for submission to the CAISO, meet the requirements for a CAISO Schedule.

1.71 "**Scheduled Energy**" means Energy intended for delivery, or to be, delivered, according to Scheduling Coordinator to Scheduling Coordinator procedures where the Schedule for such Energy was properly created using the applicable industry standard Scheduling practices and protocols.

1.72 "**Scheduling**" means the act of producing a Schedule.

1.73 "**Scheduling Coordinator**" or "**SC**" means an entity authorized to submit to the CAISO a balanced generation or demand schedule on behalf of one or more generators, and one or more end-user customers.

1.74 "**Scheduling Coordination Service**" means the performance of the duties of a Scheduling Coordinator on another entity's behalf.

1.75 "**Showing Month**" means the calendar month of the Delivery Term that is the subject of the related Compliance Showing.

1.76 "**Site**" means the location of the Project.

1.77 "**Supply Plan**" has the meaning set forth in the Tariff.

1.78 "**Tariff**" means the CAISO Tariff as it may be amended from time to time.

1.79 "**Term**" has the meaning given to it in Section 2.1 of this Agreement.

1.80 "**Transmission Losses**" means (a) for Energy, any Energy lost in the transmission and/or transformation of either Energy or Reactive Power or otherwise made unavailable for useful purposes at the Delivery Point, (b) for Real Power, any Real Power lost in the transmission and/or transformation of either Real Power or Reactive Power or otherwise made unavailable for useful purposes at the Delivery Point, (c) for Reactive Power, any Reactive Power lost in the transmission and/or transformation of either Real Power or Reactive Power or otherwise made unavailable for useful purposes at the Delivery Point, and (d) for Capacity and ancillary services, a reduction in the ability at any applicable time to provide Real Power, Reactive Power or Energy to the Delivery Point as a result of Transmission Losses as defined for Energy, Real Power and Reactive Power.

1.81 "**Transmission System**" means the relatively high voltage wires, transformers and related equipment owned (or controlled by) a particular electric utility (or grid operator) and generally used by that electric utility (or grid operator) to move bulk quantities of power between different electric utilities or from large electric generators to a utility's Distribution System (as opposed to using it to make final delivery of electric power to end-use retail customers).

1.82 "**WECC**" means the Western Electricity Coordinating Council or its successor.

1.83 "**Work**" means (a) work or operations performed by a Party or on a Party's behalf, and (b) materials, parts or equipment furnished in connection with such work or, operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "a Party's work," and (ii) the providing of or failure to provide warnings or instructions.

1.84 "**WREGIS**" means the Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing the California RPS.

1.85 "**WREGIS Certificate**" means the certificate created by the WREGIS system as such term is defined in the WREGIS account holder agreement, or successor agreement setting forth the terms and conditions of service by WREGIS.

## 2. TERM AND TERMINATION

2.1 Term and Termination. This Agreement shall govern Seller's deliveries of Energy, Capacity Attributes, and Green Attributes from the Project to Buyer starting June 1, 2020 and extending through May 31, 2025 (the "**Delivery Term**"). This Agreement shall be effective on the Effective Date and shall remain effective throughout the Delivery Term unless terminated earlier pursuant to the terms herein (the "**Term**"); *provided*, however, that the Parties may mutually agree to extend the Delivery Term for an additional five (5) year period by providing at least six (6) months' notice to each other prior to the expiration of the initial Delivery Term. Obligations remaining following expiration of the Delivery Term or an Early Termination Date, related to settlement and delivery of RECs, for settlement adjustments from the CAISO related to Energy delivered, and other covenants and conditions specified in this Agreement shall remain until satisfied.

2.2 Seller's Termination Right. Seller shall have the right, but not the obligation, to terminate this Agreement without default or liability to Buyer upon sixty (60) Days written notice if Seller is able to participate in a CPUC-governed standard tariff or contract program that would provide Seller with compensation for Product in excess of the compensation provided to Seller under this Agreement.

## 3. PURCHASE AND SALE OF PRODUCT

3.1 Purchase and Sale of Product. Seller shall sell and deliver, and Buyer shall purchase and receive, all of the Product generated by the Project during the Delivery Term pursuant to the terms of this Agreement. Seller shall deliver WREGIS Certificates in an amount equal to the Energy actually produced by the Project and delivered to Buyer at the Delivery Point. Seller shall supply Product only from the Project. Further, Seller shall supply Product from the Project whenever available consistent with Prudent Electrical Practices and shall use commercially reasonable efforts to maximize availability of the Project.

3.1.1 Renewable Generation. Seller shall generate all Energy sold to Buyer under this Agreement utilizing water supplied from Indian Valley Reservoir. Buyer shall not be obligated to purchase and pay Seller for any Energy that is not generated utilizing water supplied from Indian Valley Reservoir.

3.1.2 Delivery Point. All Energy sold to Buyer under this Agreement shall be delivered to Buyer at the Delivery Point, or at any other point(s) as the Parties may mutually agree in writing from time to time.

3.1.3 Energy Delivery. To the extent that transmission service is necessary for Seller to make required deliveries of Energy to the Delivery Point, Seller shall reserve and utilize, at its own expense, firm transmission service from the Project to the Delivery Point in the amount necessary for delivery of all Energy sold to Buyer under this Agreement. To the extent that transmission service is necessary for Buyer to take receipt of Energy as required at the Delivery Point, Buyer shall arrange and be responsible for transmission service from the Delivery Point. Title to and risk of loss associated with the Energy shall pass from Seller to Buyer at the Delivery Point, in accordance with the Scheduling procedures set forth in this Agreement.

3.1.4 Transmission Losses. Except as specifically stated otherwise, all Capacity and Energy amounts specified herein are amounts as provided at the Delivery Point, without additional reduction by Transmission Losses included by Seller in transmitting such products to the Delivery Point. Seller shall have considered such factors prior to specifying the amount of net Energy to be made available at the Delivery Point. All Schedules shall be for amounts to be delivered to Buyer or to be provided on Buyer's behalf at the Delivery Point.

3.1.5 Transmission and Distribution Service. Seller, at its sole cost, shall maintain generator Interconnection Agreements for the interconnection of the Project to the Host Electric Utility's Distribution System or Transmission System. If the Delivery Point is not at the high side of the substation interconnecting the Project to the Transmission System, then Seller shall be responsible, at Seller's sole cost, for maintaining firm contractual rights and Distribution Service to transmit the Energy to the Delivery Point.

3.2 Purchase and Sale of Green Attributes. Seller shall sell and deliver, and Buyer shall purchase and receive from Seller, all rights, title, and interest in all Green Attributes associated with Energy produced by the Project and delivered to Buyer at the Delivery Point; *provided*, Buyer shall not be obligated to purchase or pay Seller for any Green Attributes associated with any amount of Energy that is not generated by water supplied from Indian Valley Reservoir. Seller's sale of Green Attributes shall be documented by WREGIS Certificates deposited into Buyer's WREGIS account. If other forms of attestation are requested by Buyer to confirm Buyer's ownership of Green Attributes generated by the Project, then Buyer shall provide Seller with such forms of attestations, and Seller shall provide such attestations thereafter. Seller agrees to sell and make all such Green Attributes available to Buyer to the fullest extent allowed by applicable law, in accordance with the terms of this Agreement. Seller warrants that all Green Attributes provided under this Agreement to Buyer shall be free and clear of all liens, security interests, claims and encumbrances.

3.2.1 Reporting of Ownership of Green Attributes. During the Term, Seller shall not report to any person or entity that the Green Attributes sold and conveyed hereunder to Buyer belong to anyone other than Buyer, and Buyer may report that such Green Attributes purchased hereunder belong to Buyer.

3.2.2 Evidence of Green Attributes. Seller shall cooperate with Buyer to register the Project with WREGIS. Seller's delivery of WREGIS Certificates to Buyer's WREGIS account shall be evidence of Seller's delivery of Green Attributes to Buyer. At Buyer's request, Seller shall provide evidence to Buyer, or to third parties, of Buyer's right, title, and interest in such Green Attributes.

3.2.2.1 Cost of Compliance with Green Attribute Reporting. Seller shall be responsible for complying, at its own expense, with any requirements imposed by WREGIS for the purpose of delivering and verifying Buyer's renewable energy purchases under this Agreement.

3.2.2.2 Use of WREGIS to Transfer Green Attributes. The Parties agree that Green Attributes, including any associated RECs, shall be created in WREGIS in the form of WREGIS Certificates. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to register the Project within Buyer's WREGIS account so that all WREGIS Certificates associated with all Green Attributes corresponding to all Energy generated by the Project and delivered to Buyer hereunder are issued and tracked in accordance with the requirements of the California RPS and transferred pursuant to the WREGIS operating rules to Buyer. In the event that WREGIS Certificates do not transfer the full value of the Green Attributes purchased by Buyer pursuant to this Agreement, at Buyer's written request, Seller shall work with Buyer to develop a "REC Attestation and Bill of Sale" or additional documentation to effect the complete transfer of the Green Attributes purchased hereunder.

3.2.2.3 Buyer's WREGIS Account. Buyer shall be responsible for all expenses associated with (A) establishing and maintaining Buyer's WREGIS Account, and (B) subsequently transferring or retiring WREGlS Certificates.

3.2.2.4 If there is any deficit or surplus in RECs delivered to Buyer for a calendar month as compared to the Energy generated by the Project and delivered to Buyer hereunder for the same calendar month, other than for reasons due to the fact that RECs are created in whole MWhs, and not fractional MWhs, the Parties shall cooperate in good faith to cause

WREGIS to correct the error or omission resulting in the surplus or deficit (a "**WREGIS Certificate Modification**"). Any error or omission on the part of WREGIS does not relieve Seller of its obligation to provide all Green Attributes from the Project to Buyer. If a WREGIS Certificate Modification is required, Seller shall cooperate with Buyer to provide any supporting documentation pertaining to the WREGIS Certificate Modification.

3.2.2.5 Buyer shall make payment for a given month in accordance with this Agreement. If RECs created for a given month (approximately 90 days following a given month) are less than or greater than the Energy delivered for such month, then: (i) if there is an under delivery of RECs, Buyer shall receive a monetary credit or refund for Seller's under delivery of RECs in an amount equal to the quantity of RECs that Seller failed to deliver multiplied by the REC Value, and (ii) if there is an over delivery of RECs, then Seller shall receive an additional payment equal to the quantity of excess RECs that Seller delivered multiplied by the REC Value.

3.2.2.6 If WREGIS changes its operating rules after the Effective Date or applies the WREGIS operating rules in a manner inconsistent with this Agreement after the Effective Date, then the Parties shall modify this Agreement in a timely manner as reasonably required to cause and enable RECs to be created in Buyer's WREGIS Account in a quantity for each given calendar month that is equal to the Energy generated by the Project and delivered to Buyer at the Delivery Point in the same calendar month.

3.2.3 PCC-1 Classification. Seller warrants that the Energy bundled with the RECs from the Project meets the RPS compliance requirements for Portfolio Content Category 1 as set forth in the PUC Code 399.16(b)(1)(A) and CPUC Decision 11-12-052 as of the effective date of this Agreement.

3.2.4 CEC Certification. Seller shall maintain RPS-Certification throughout the Term of the Agreement.

## 4. CHARGES

4.1 Payments by Buyer. During the Delivery Term, Buyer shall pay Seller a Monthly Energy Charge for the amount of Energy delivered to the Delivery Point and reflected in the Final Schedules. The Monthly Energy Charge varies depending on the particular hours of delivery, as further specified below. For the purpose of calculating the Monthly Energy Charge, the Final Schedules shall be as measured by the Seller's CAISO Revenue Meter at the Delivery Point adjusted for any Transmission Losses.

Monthly Energy Charge = (On-Peak Final Schedules x On-Peak Hours Energy Price) + (Off-Peak Final Schedules x Off-Peak Hours Energy Price)

On-Peak Hours Energy Price: $[redacted]/MWh

Off-Peak Hours Energy Price: $ [redacted]/MWh

| On-Peak Hours | Off-Peak Hours |
|---|---|

| | |
|---|---|
| HE 7 – 22 Monday through Saturday except NERC Holidays | All Other Hours (Includes all day on Sundays and NERC Holidays) |

4.2 CAISO and Transmission Provider Fees. All charges and costs imposed upon generators or incurred in delivering Energy to the Delivery Point, which may include Operating Reserves, transmission costs and charges, distribution service charges imposed by the Pacific Gas & Electric Company, and any costs or charges for Transmission Losses, marginal losses and congestion due to the difference in location between the Project and the Delivery Point, shall be borne by Seller.

4.3 Distribution and Interconnection Costs. Seller shall be responsible for all fees, costs, or charges associated with interconnection of the Project with the CAISO Balancing Authority Area or Host Electric Utility distribution system, including, without limitation, any special facilities charges and distribution service charges.

4.4 Imbalance Energy Charges. Seller shall be responsible for any CAISO Imbalance Energy charges and shall reimburse Buyer for any charges imposed on Buyer by CAISO that are incurred due to imbalances associated with the Project. Buyer shall be fully responsible for acts and omissions of Buyer's SC and shall indemnify Seller for all CAISO Penalties, cost, charges and liabilities resulting from any acts, omissions, costs, charges and liabilities resulting from a failure of Buyer's SC to comply with this Agreement or the Tariff.

## 5. RESOURCE ADEQUACY CAPACITY RIGHTS

5.1 Sale of Capacity Attributes. Buyer shall be entitled to all Capacity Attributes associated with the Project during the Delivery Term. The consideration for all such Capacity Attributes is included within the Monthly Energy Charge. During the Delivery Term, Seller shall not sell or attempt to sell the Capacity Attributes to any other Person except Buyer, and Seller shall not report to any person or entity that the Project's Capacity Attributes belong to anyone other than Buyer.

5.2 At Buyer's request, Seller shall cooperate with Buyer to: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes to Buyer; and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including: (A) assisting Buyer to register the Project with the CAISO so that the Capacity Attributes are able to be recognized and counted for Buyer's Resource Adequacy purposes; (B) assisting Buyer in making such annual submissions to the CAISO associated with establishing the correct quantity of the Facility's Capacity Attributes; (C) coordinating with Buyer on the submission to the CAISO of monthly Supply Plan submissions (or corrections), as required by the CAISO Tariff; and (D) cooperating with Buyer to provide the CAISO all necessary information for annual and other outage planning.

5.3 Seller shall deliver such additional documents, instruments, submissions and information as may be requested by Buyer in connection with Buyer's purchase of Capacity Attributes; *provided*, that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

5.4 Seller shall cooperate with Buyer to deliver the Capacity Attributes by submitting the Project and its NQC to the CAISO in Seller's Supply Plan. The Capacity Attributes shall be deemed delivered and received when the CIRA Tool shows the Supply Plan accepted for the NQC from the Project by CAISO or Seller complies with Buyer's instruction to withhold all or part of the NQC from Seller's Supply Plan for any Showing Month during the Delivery Term but Seller otherwise delivers the amount of NQC that Buyer does not direct Seller to withhold. Seller has failed to deliver the Capacity Attributes if (i) Buyer has elected to submit the NQC from the Facility in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO, or (ii) Seller fails to submit in its Supply Plan the volume of NQC for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to deliver the Capacity Attributes if Buyer fails to submit or chooses not to submit the Facility and the NQC in its Resource Adequacy Plan with the CPUC or CAISO.

## 6. SCHEDULING OF ENERGY

6.1 General. The Parties agree that Scheduling hereunder shall follow the procedures established by the WECC and as set forth in this Agreement. Subject to the terms of this Agreement, if there are any differences between WECC procedures and the procedures set forth in this Section 6, this Section 6 shall control. Notwithstanding the foregoing, if the Scheduling provisions in this Section 6 cause Seller or Buyer to violate WECC standards or any terms of its agreements with the CAISO (including CAISO Tariff provisions), then the Parties shall promptly meet to resolve the issue, such that no violation occurs.

6.2 Scheduling Coordination Service. Throughout the Delivery Term, Buyer shall provide Scheduling Coordination Service with respect to the Project's Energy.

6.2.1 Daily Prescheduling. In accordance with this Section 6, Seller shall forecast Project output fourteen (14) Days ahead and submit such Schedule of hourly Project output via email to Buyer on a weekly basis. In advance of 5:00 a.m. each Prescheduling Day, Seller shall notify Buyer or Buyer's designee of any changes to the previously submitted Schedule on an exception basis, with the prior Schedule controlling if no changes are communicated. Seller shall make available and deliver Energy for each hour of the Preschedule so determined. Seller shall notify Buyer or Buyer's designee at the time of Prescheduling if Seller is prevented from making Capacity and Energy available for the Day being Prescheduled due to an unforeseen circumstance.

6.2.1.1 Buyer or Buyer's designee, acting as Seller's Scheduling Coordinator, shall self-schedule (bid in as a price-taker) the amounts specified in the email into the CAISO's IFM.

6.2.1.2 Buyer, as purchaser of Project output, may use the negative IFM uplift credit provided generators that self-schedule into the CAISO's IFM.

6.2.1.3 Once Energy is Scheduled pursuant to this Agreement, Seller shall deliver such Energy, subject to any hourly adjustments provided for pursuant to this Agreement.

6.2.2 Hour-Ahead Schedules. In accordance with this Section 6, if necessary to comply with applicable law, regulations or CAISO protocol, or to avoid financial penalties, Seller may request Delivery-Day changes to the Preschedule adopted under this Agreement to reflect any changes to the anticipated output of the Project. Seller is responsible for forecasting any Delivery-Day changes to Project output, and to provide any such Delivery-Day changes to Buyer or Buyer's designee via telephone.

6.2.2.1 Subject to notification at least thirty (30) minutes prior to the earlier of applicable CAISO and NERC scheduling deadlines, Buyer or Buyer's designee, acting as Seller's Scheduling Coordinator, shall implement such requests for Delivery-Day changes to the adopted Preschedule by placing revised self-schedules (bid in as a price-taker) into the hour-ahead market that reflect the changes to Project Energy, except in the event of hour-ahead market failures.

6.2.3 Intra-Hour Scheduling. Except as this Section 6.2.3 might be subsequently modified pursuant to the express provisions of this Agreement, Seller shall have no right to make intra-hour (i.e., after the close of the CAISO's hour-ahead market) Schedule changes.

6.2.4 Scheduling Coordination Pass-through of Charges. Buyer shall pass through to Seller any and all credits or charges from the CAISO directed to the generation owner at the generator PNode for the Project, unless otherwise indicated in this Agreement, including but not limited to:

6.2.4.1 Any charges for energy, congestion, and losses that Buyer receives from the CAISO due to hourly Imbalance Energy associated with Scheduling Energy from the Project;

6.2.4.2 Any charges, penalties, or fees imposed by the CAISO due to the difference between actual Project output and Scheduled Project output in any hour;

6.2.4.3 Any CAISO fees and charges normally assessed to generators, including Grid Management Charges (as such term is defined in the relevant CAISO tariff), and any other CAISO charges or fees which are related to Scheduling of Energy from the Project (including any that come into existence during the Term of this Agreement) but only to the extent that such charges, penalties, or fees are a direct result of CAISO rules as they are applied to the Project individually and not simply a pro rata share of Buyer's cumulative charges as a Scheduling Coordinator from the CAISO;

6.2.4.4 Any resettlements of past monthly bills implemented by the CAISO;

6.2.4.5 Any resettlements of past monthly bills which result from corrections made in response to the discovery of inaccurate meter data; provided however any such cost shall not be passed through to the extent that such costs are a direct result of actions or inactions by Buyer or Buyer's designee performing as Seller's Scheduling Coordinator, that conflict with any directions explicitly provided by Seller; and

6.2.4.6 Any shortfall between the hourly DA PNode LMP times the hourly Final Schedule Energy values and the payments for Energy received from the CAISO for Day Ahead, Hour Ahead and Real Time energy deliveries. Buyer shall entitled to receive the DA PNode LMP for Energy delivered to Buyer, including any DA PNode LMP adjustments made by the CAISO.

6.2.5 Timing of Pass-Through of Charges. The Parties acknowledge that due to the CAISO settlement timelines, the above-referenced CAISO fees and charges will not be passed through to Seller in the same month that they are incurred. Instead, Buyer shall pass through such fees and charges, as defined in Section 6.2.4, after it receives the settlement invoices from the CAISO.

6.2.6 CAISO Adjustments. Seller acknowledges that the CAISO may issue revised settlement statements that change the amount due from Seller for a previous month, and that Buyer will pass through any such charges or credits to Seller. Seller agrees that it is responsible for paying any such additional charges.

6.2.7 LIMITATION OF LIABILITY. THE BUYER SCHEDULING COORDINATION SERVICES ARE PROVIDED "AS IS" FOR USE IN AN ELECTRONIC TRADING ENVIRONMENT. BUYER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO BUYER SCHEDULING COORDINATION SERVICES. INCLUDING ALL WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM ANY CLAIMED COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. BUYER MAKES NO REPRESENTATIONS THAT THE BUYER SCHEDULING COORDINATION SERVICES WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. ANY CLAIM ARISING FROM AN ALLEGATION OF BUYER'S NEGLIGENCE, OR FROM AN ALLEGATION OF BREACH OF CONTRACT BY BUYER THAT ARISE OUT OF OR RELATE TO BUYER'S PROVISION OF SCHEDULING COORDINATION SERVICE, SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS: (i) NO SUCH CLAIM MAY BE BROUGHT FOR BUYER ACTS OR FAILURES TO ACT OCCURING DURING THE FIRST SEVENTY-FIVE (75) DAYS OF THE AGREEMENT; AND (ii) BUYER'S MAXIMUM LIABILITY TO SELLER UNDER THIS AGREEMENT ARISING OUT OF OR RELATED TO BUYER'S PROVISION OF SCHEDULING COORDINATION SERVICE SHALL NOT EXCEED $50,000 PER CALENDAR YEAR; AND (iii) ANY SUCH CLAIM MUST BE BROUGHT WITHIN SIX (6) MONTHS OF THE EVENT GIVING RISE TO THE CLAIM. IF ANY SUCH CLAIM IS NOT BROUGHT WITHIN SUCH SIX (6) MONTH PERIOD, THE RIGHT TO DO SO SHALL BE DEEMED WAIVED, IRRESPECTIVE OF ANY DIFFERENT TIME LIMIT SET FORTH IN ANY STATUTE OF LIMITATIONS THAT OTHERWISE WOULD APPLY. WITH RESPECT TO CLAIMS THAT ARE SUBJECT TO THE LIMITS SET FORTH IN THIS SECTION, SELLER ACKNOWLEDGES THAT IT MAY HAVE CLAIMS IN ANY GIVEN CALENDAR YEAR THAT INDIVIDUALLY OR

COLLECTIVELY INVOLVE MORE THAN $50,000 AND SELLER EXPRESSLY WAIVES ITS RIGHT TO PURSUE ANY SUCH CLAIM TO THE EXTENT THAT IT EXCEEDS SUCH LIMITS.

6.2.8 Final Schedules. For purposes of calculating monthly settlements and billing, the metered MWh as measured by the Seller's CAISO Revenue Meter at the Delivery Point adjusted for any Transmission Losses shall be considered final schedules ("**Final Schedules**"). Any discrepancies regarding the Final Schedules shall be resolved by the Parties, in accordance with standard industry practice.

## 7. OPERATION AND PLANNING

7.1 Access to Meter Data. Seller shall grant Buyer the right and capability of querying the CAISO Revenue Meter. If querying the PG&E meter is required, Seller and Buyer shall cooperate to obtain data Buyer reasonably believes is necessary from PG&E.

7.2 Outages. Seller shall report accurate outage information to Buyer as the Scheduling Coordinator in a timely manner to comply with NERC and CAISO outage reporting requirements. Depending upon the outage type reporting shall be as follows:

7.2.1 Planned Outages. Seller shall notify Buyer using the contacts specified in Exhibit A for Planned Outages. Seller shall not schedule Planned Outages during the months of June to September that reduces the Capacity of the Project by more than ten percent (10%), unless (1) a Planned Outage is required to avoid damage to the Project, (2) a Planned Outage is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (3) a Planned Outage is required in accordance with Prudent Electrical Practices, or (4) the Parties agree otherwise in writing.

7.2.2 Forced Outages. Seller shall promptly provide to Buyer a verbal (telephone) report of any Forced Outage of the Project that will change, or has changed, the ability of the Project to generate Energy that has been scheduled with the CAISO. This report shall include the amount of the generation capability of the Project that will not be available because of the Forced Outage, any modifications needed to the hourly Energy scheduled with the CAISO during the period of the outage, the time at which the Forced Outage began, and the expected return date and time of such generation capability. Seller shall follow-up the verbal notice with a written Forced Outage notification, which shall include all of the above information and shall also include any update as necessary to advise Buyer of changed circumstances, within four (4) hours. Seller shall provide Buyer with updates on any changes to any of the Forced Outage information from the last, most recent update provided to Buyer, such as changes in Project Capacity expected Energy output, expected time of return to service, etc.

## 8. PERMITTING, STANDARD OF CARE, OPERATIONS

8.1 Permitting. Seller shall be responsible for obtaining and maintaining all permits and other governmental approvals for the ownership and operation of the Project. Buyer may cooperate in such permitting efforts to the extent reasonably requested by Seller.

8.2 Standard of Care. Seller shall pay the costs of and be responsible for operating and maintaining the Project in accordance with all applicable laws and regulations, and shall comply with all applicable WECC, CAISO, FERC and NERC requirements, and with Prudent Electrical Practices, including applicable interconnection and telemetering requirements set forth in the Interconnection Agreements and the Tariff. Seller shall ensure that: (a) operation and maintenance of the Project is conducted in a safe manner in accordance with the Interconnection Agreements and Prudent Electrical Practices; and (b) any governmental authorizations and permits required for the construction and operation thereof are maintained. Seller shall ensure that any necessary and commercially reasonable repairs are made with the intent of optimizing the availability of electricity to Buyer.

8.3 Operation of the Project. The Project shall be operated in accordance with Prudent Electrical Practices. Seller has an obligation to maximize availability of the Project in accordance with Prudent Electrical Practices. Seller may interrupt or reduce deliveries only due to Force Majeure, curtailment by the CAISO, or any interconnection or transmission service provider, Planned Outages, and Forced Outages. Seller shall take all reasonable measures in accordance with Prudent Electrical Practices to minimize the frequency and actual duration of Planned Outages. All Planned Outages shall be scheduled in advance.

8.4 Buyer Performance Excuse. Buyer shall not be obligated to accept or pay for Energy produced by the Project during a Force Majeure event that prevents Buyer's ability to accept Energy from the Project.

## 9. FORCE MAJEURE

9.1 Effect of Force Majeure. A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement (other than the obligations of a Party to make payment of amounts due under this Agreement) when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate; provided the Party has given a written detailed description of the full particulars of the Force Majeure that are then known to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) calendar days after the initial occurrence of the claimed Force Majeure) (the "**Force Majeure Notice**"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

9.2 Meaning of Force Majeure. The term "Force Majeure" means any act of God, labor disturbance, act of the public enemy or criminal activity, war, insurrection, riot, fire, storm or flood, earthquake, extreme or unusual weather events, explosion not caused by the affected Party, change in law or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any similar event or occurrence (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated and avoided as of the date of this Agreement, (iii) which is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such Affiliate or subcontractor is responsible), and (iv) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided nothing in this clause (iv) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise reasonable efforts to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an "**Unexcused Cause**"): (1) any requirement to meet a renewable portfolio standard or any change (whether voluntary or mandatory) in any renewable portfolio standard that may affect the value of the Energy purchased hereunder; (2) events arising from the failure by Seller to operate or maintain the Project in accordance with this Agreement, unless such failure was itself caused by an event of Force Majeure; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Energy at a price in excess of that provided in this Agreement or Buyer's ability to purchase any Energy at a price less than that provided in this Agreement; (6) failure of third parties to provide goods and services essential to a Party's performance, unless such failure was itself caused by an event of Force Majeure; (7) Project or related equipment failure of any kind unless caused by a Force Majeure; (8) any changes in the financial condition of Buyer or Seller or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement; (9) inability of Seller to obtain the necessary governmental approvals to operate the Project; or (10) a determination by either Party's governing body.

9.3 Buyer Excuse. For purposes of this Agreement, a Force Majeure shall be deemed to excuse Buyer from receiving Energy at the Delivery Point if the Force Majeure is not related to the Project, is declared by Buyer, and prevents Buyer from receiving Energy from the Project.

9.4 Termination Due to Force Majeure Event. If based on a Force Majeure Notice, the unaffected Party reasonably concludes that a Force Majeure or its impact on the affected Party or the Project will continue for a period of at least seventy-five percent (75%) of the remaining term of the Agreement, the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party. Any termination of this Agreement in the circumstances described in this section shall be without prejudice to the rights and remedies of either Party for defaults occurring prior to such termination.

## 10. EVENTS OF DEFAULT, TERMINATION AND REMEDIES

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

10.1.1 The failure to make, when due, any payment required pursuant to this

Agreement if such failure is not remedied within five (5) Business Days after written notice;

10.1.2 Any representation or warranty made by such Party herein is false or misleading in any material respect when made, and such default shall not be cured within thirty (30) calendar days after written notice;

10.1.3 The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure shall not be cured within thirty (30) calendar days after written notice; *provided*, however, that if (i) such failure cannot be cured within such thirty (30) calendar day period, (ii) such failure is susceptible of cure within ninety (90) calendar days, (iii) the Defaulting Party is proceeding with diligence and in good faith to cure such failure, and (iv) the Defaulting Party shall have delivered notice to the Non-Defaulting Party describing the details of clauses (i), (ii) and (iii) above and periodic updates regarding its efforts to cure such failure, then such thirty (30) calendar day cure period shall be extended to such date, not to exceed a total of ninety (90) calendar days, as shall be necessary to cure such failure; or

10.1.4 The initiation of an involuntary proceeding against such Party under the bankruptcy, insolvency, or dissolution laws, which involuntary proceeding remains undismissed for ninety (90) calendar days, or in the event of the initiation by such Party of a voluntary proceeding under the bankruptcy, insolvency, or dissolution laws.

10.2 An “Event of Default” shall also include, with respect to Seller, the occurrence of any of the following:

10.2.1 Seller has not sold or delivered any Energy from the Project to Buyer for a period of three hundred and sixty-five (365) consecutive Days.

10.2.2 Seller’s failure to maintain RPS Certification for the Project, if such failure is not cured within thirty (30) Days after written notice; provided that during any period where Seller has not maintained RPS Certification for the Project, whether before or after written notice, Buyer shall not be obligated to purchase any Energy and Green Attributes from Seller hereunder, but Seller may sell such Energy and Green Attributes to third parties.

10.3 Declaration of an Event of Default. If an Event of Default has occurred and is continuing, the other Party (“**Non-Defaulting Party**”) shall have the right to: (a) send notice, designating a day, no earlier than five (5) calendar days after such notice is deemed to be received and no later than twenty (20) calendar days after such notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) unless the Parties have agreed to resolve the circumstances giving rise to the Event of Default; (b) accelerate all amounts owing between the Parties; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to terminate this Agreement, the Non-Defaulting Party shall be entitled to recover actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Section 10.1 or 10.2, nor the termination of this Agreement by a Non-Defaulting Party, shall limit the right of a Non-Defaulting Party to rights and remedies available at law, including claims for breach of contract or failure to perform by the other

Party and for direct damages incurred by the Non-Defaulting Party as a result of the termination of this Agreement, subject in each case to any limitations in this Agreement.

10.4 Termination Payment Calculation. If an Event of Default occurs, ultimately resulting in termination of the Agreement, a Termination Payment shall be determined in accordance with this Section 10.4.

10.4.1 The "**Termination Payment**" payable by the Defaulting Party to the Non-Defaulting Party shall equal: (i) Non-Defaulting Party's Loss as calculated under Section 10.4.1.1 below and discounted to present value as set forth under Section 10.4.1.2 below; plus (ii) Non-Defaulting Party's Cost as calculated under Section 10.4.1.3 below; which will then be aggregated with any amounts owed to the Non-Defaulting Party as of the Early Termination Date and any set-offs to which Defaulting Party is entitled as set forth under Section 10.4.1.4 below. If the Termination Payment as so calculated would be less than zero, it shall be deemed to be zero.

10.4.1.1 The Parties intend that Non-Defaulting Party's Loss shall be the economic loss (exclusive of Costs), if any, resulting from the termination of the Agreement, determined in a commercially reasonable manner as calculated in accordance with this Section 10.4 ("**Loss**"). The Loss, if any, suffered by Non-Defaulting Party shall be determined by comparing the estimated value of Monthly Energy Charges for the remainder of the Delivery Term had the Agreement not been terminated to the market cost of procuring California RPS PCC 1 bundled renewable energy and RECs and associated Capacity of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point for the remainder of the Delivery Term ("**Replacement Cost**"). The Replacement Cost shall be determined by averaging four reasonably priced quotes, two of which shall be obtained by Buyer and two of which shall be obtained by Seller. If either Party fails to provide two quotes, then the average of the other Party's two quotes shall determine the Replacement Cost. For clarity, if Buyer is the Non-Defaulting Party, the Non-Defaulting Party's Loss equals the amount by which the Replacement Cost exceeds the estimated value of Monthly Energy Charges for the remainder of the Delivery Term. If Seller is the Non-Defaulting Party, the Non-Defaulting Party's Loss equals the amount by which the estimated value of Monthly Energy Charges for the remainder of the Delivery Term hereunder exceeds the Replacement Cost, less the expenses saved by Seller due to Buyer's default, which includes, but is not limited to, the cost of production of the Energy, Capacity Attributes, and Green Attributes. To ascertain the Replacement Cost, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in renewable contracts, and other bona fide third-party offers, all adjusted for the length of the remaining Term and differences in transmission. It is expressly agreed that Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

10.4.1.2 The Loss calculated under Section 10.4.1.1 shall be discounted to present value using the present value rate of six percent (6%) as of the time of termination (to take into account the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to this Agreement).

10.4.1.3 Non-Defaulting Party's Costs shall be calculated as the sum of the brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating and replacing the Agreement, including, reasonable transmission costs associated with any replacement contract, and reasonable attorneys' fees, if any, incurred in connection with Non-Defaulting Party enforcing its rights with regard to the Agreement. Non-Defaulting shall use reasonable efforts to mitigate or eliminate Costs.

10.4.1.4 Non-Defaulting Party shall add any amounts owed by the Defaulting Party to the Non-Defaulting Party as of the Early Termination Date to, and shall set-off any amounts owing by the Non-Defaulting Party as of the Early Termination Date, against the Termination Payment so that all such amounts are aggregated and/or netted to a single amount. The net amount due shall be paid within thirty (30) Days following the effective date of termination, or, if the Parties disagree regarding the calculation of the Termination Payment, the date that the Parties agree on the Termination Payment pursuant to Section 10.4.2 below.

10.4.1.5 In no event, however, shall the calculation of Loss or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

10.4.2 If the Defaulting Party reasonably disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be resolved in accordance with Section 15 of this Agreement.

## 11. BILLING AND PAYMENTS

11.1 General. Billing and payment for the Energy, Capacity Attributes, and Green Attributes sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as set forth in this Agreement, including in Section 11.

11.2 Invoices.

11.2.1 Amounts Owed by Buyer. Within ten (10) Days of the close of each month of the Delivery Term, Buyer shall prepare and electronically forward to Seller, at the address set forth on Exhibit A, an invoice that shows the Monthly Energy Charge as calculated in accordance with Section 4.1. Seller shall have twenty (10) Days to dispute the invoice. Buyer shall pay the undisputed amount of each invoice within thirty (30) Days of Buyer's delivery of each invoice to Seller. When the due date falls on a Day which is not a Business Day the payment shall be due the following Business Day.

11.2.2 Amounts Owed to Buyer. The invoice shall set forth, as applicable, any fees and charges due and owing to Buyer pursuant to this Agreement, which include, but are not limited to, any charges that are passed through from the CAISO per this Agreement.

11.3 Form of Invoice. The Parties shall include in each invoice sufficient detail to allow the other Party to verify the charges. The Parties shall send any required invoice related communication under this Agreement to the addresses set forth in Exhibit A.

11.4 Method of Payment.

11.4.1 Payments to Seller. Buyer shall pay to Seller, by wire transfer of immediately available funds (or electronically through the Automated Clearinghouse (ACH) to the account specified in Exhibit A.

11.4.2 Payments to Buyer. In the event that the amount owed to Buyer by Seller for any month exceeds the amount owed by Buyer to Seller, Seller shall pay to Buyer, by wire transfer of immediately available funds to the account specified in Exhibit A. If an amount is due to Buyer, then Buyer will issue an invoice to Seller. Seller will pay the invoice within ten (10) Days of receipt of such invoice or on the last Business Day of the month, whichever is later. When the due date falls on a Day which is not a Business Day the payment shall be due the following Business Day.

11.5 Disputed Settlement Statements. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to any invoice, rendered under this Agreement or adjust any invoice for any arithmetic, computational, meter data or other error within three (3) months of the date of the invoice, or the date the adjustment to an invoice was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed at the time payment is due, payment of the disputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required reimbursement shall be made within seven (7) Business Days of such resolution along with interest accrued at the Interest Rate from and including the date paid.

11.6 Interest on Past Due Amounts. Late payments shall bear interest accrued at the Interest Rate from the date due until paid.

## 12. AUDIT RIGHTS

Seller and Buyer shall each have the right to audit and examine any relevant information to the extent necessary to verify the accuracy of any invoice, charge, or computation provided for in this Agreement (including the accuracy and supporting documentation for the delivery of Green Attributes and Capacity Attributes under this Agreement). Any such audit shall be performed at the expense of the Party conducting the audit and shall be undertaken by such Party or its representatives at its sole expense and during normal working hours and in conformance with generally accepted auditing standards. The right of any Party to audit shall continue for a period of one (1) year following receipt of any invoice or, if applicable, REC Attestation and Bill of Sale, which right shall be exercised by a Party delivering written notice to the other Party on or before the close of said one (1) year period that such Party has elected to conduct an audit. All audits shall be performed as soon as reasonably possible after delivery of the written notice that an audit will be conducted. The failure of a Party to timely deliver notice within said one (1) year period shall result in a conclusive and irrefutable presumption that the invoice or, if applicable, REC Attestation and Bill of Sale in question was correct. Each Party shall retain all records and documentation necessary for verification of all invoices, Green Attributes, Capacity Attributes, and payments required by this Agreement for the one (1) year period allowed for the giving of notice that an audit will be conducted, and for so long thereafter as necessary to complete any then ongoing audit process and finally resolve any disputes.

## 13. NOTICES

13.1 General. Except as specifically provided below, any notice or notification 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 A or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been validly served, given or delivered: (i) five (5) Business Days following deposit in the United States mail, with proper first class postage prepaid; (ii) the next Business Day after such notice was delivered to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees; or, (iii) upon receipt of notice given by personal delivery.

13.2 Forced Outage Notices. Notices of Forced Outage or other outage notifications made by Seller pursuant to this Agreement shall be made verbally to the appropriate Party at the phone number specified in Exhibit A, followed by written notice via e-mail to the addressee listed in Exhibit A. For events affecting only Delivery-Days not yet Prescheduled, verbal and e-mail notices shall be directed to the Buyer Prescheduling Contacts listed in Exhibit A. For all other events, verbal and e-mail notices shall be directed to the Buyer Real-Time Scheduling Contacts listed in Exhibit A. Notice will be effective at the time verbally given. A Party may change its contact person(s) or contact information specified in Exhibit A by giving notice of the change to the other Party.

## 14. LIMITATION OF LIABILITY AND INDEMNITY

14.1 LIMITATION OF LIABILITY. NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT OR TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) AND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF SELLER OR OF BUYER FOR SUCH DAMAGES. THIS PROVISION IS NOT INTENDED TO LIMIT THE RIGHT OF EITHER PARTY TO OBTAIN COVER DAMAGES FOR BREACH OF THIS AGREEMENT.

14.2 Indemnities.

14.2.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including reasonable costs and reasonable attorney’s fees, resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to and at the Delivery Point; (ii) Seller’s operation and/or maintenance of the Project; or (iii) Seller’s actions or inactions with respect to this Agreement, including, without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors or officers.

14.2.2 Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, or Buyer's actions or inactions with respect to this Agreement, including, without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

**15. DISPUTE RESOLUTION**

15.1 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.

15.2 In the event of any dispute arising under the PPA, within ten (10) Days following the receipt of a written notice from either Party identifying such dispute, the authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) Days of initiating such discussions, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The venue shall be the Superior Court in Sacramento County. Each Party shall pay and be responsible for their own attorney fees.

**16. REPRESENTATIONS, COVENANTS, AND WARRANTIES**

16.1 Seller's Representations and Warranties. Seller represents and warrants as follows:

16.1.1 Seller is duly organized and validly existing and in good standing under the laws of the State of California.

16.1.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

16.1.3 Seller's management has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

16.1.4 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

16.1.5 As of the first date of the Delivery Term (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewable Portfolio

Standard.

16.1.6 The Project meets the criteria of a renewable electricity generation facility as defined in Chapter 8.6 of Division 15 of the California Public Resources Code and as specified by guidelines adopted thereunder, and the Project is not a hybrid system.

16.2 Buyer Representations and Warranties. Buyer represents and warrants as follows:

16.2.1 Buyer is duly organized, validly existing and in good standing under the laws of the State of California.

16.2.2 Buyer has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms hereof.

16.2.3 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

16.2.4 This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank. moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

## 17. CONGESTION HEDGING RIGHTS

Seller shall attest to any authorities, as necessary, as to Buyer’s exclusive rights to the Product from the Project, as necessary for Scheduling, transmission service applications, congestion management purposes, or marginal losses management purposes.

## 18. ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that notwithstanding the foregoing, Buyer, without the consent of Seller (and without relieving itself from liability hereunder), may transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to a successor entity. Seller shall pay Buyer’s out of pocket expenses, including reasonable attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under the Agreement. Any direct or indirect 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 shall not be unreasonably withheld.

## 19. MISCELLANEOUS

19.1 Partial Invalidity and Severability. The invalidity, in whole or in part, of any of the articles, sections or paragraphs of this Agreement will not affect the validity of the remainder or such articles, sections or paragraphs. Should any provision of this Agreement be held illegal, such illegality shall not invalidate the whole of this Agreement; instead, the Parties shall use their best efforts to reform the Agreement in order to give effect to the original intent of the Parties and to maintain the balance of the equities of the transaction contemplated by this Agreement in all material respects.

19.2 Amendment. No modification, amendment, or other change to this Agreement will be effective unless consented to in writing by each of the Parties.

19.3 Waiver. Failure, delay or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing and signed by an authorized officer of such Party.

19.4 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Electronic signatures shall have the same effect as original signatures.

19.5 Mutual Cooperation. The Parties shall do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement. In particular, if any governmental or administrative approval, permit, order or other authorization shall be necessary relative to any provision of this Agreement or any transaction contemplated by this Agreement, then each Party shall use all commercially reasonable efforts to assist in the obtaining of such approval, permit, order or other authorization.

19.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.

19.7 Headings. The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions.

19.8 Interpretation: Drafting Construction. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires. Whenever the words "include(s)" or "including" are used in this Agreement, they should be interpreted to mean include(s) or including, but not limited to. Because both Parties have participated in the drafting of this Agreement, the rule of contract construction that resolves ambiguities against the drafter shall not apply.

19.9 Entire Agreement. This Agreement (including the attached Exhibit, which is incorporated by this reference) and all amendments to this Agreement contain the complete agreement between Seller and Buyer with respect to the matters contained in this Agreement and supersede all other agreements, whether written or oral, with respect to the matters contained in this Agreement.

19.10 Applicable Law. The validity, interpretation and effect of this Agreement shall be governed exclusively by the laws of the State of California, without reference to any of its laws that would direct the application of the laws of a different jurisdiction.

19.11 No Dedication of Facilities. Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system, electric generation facilities, or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19.12 Greenhouse Gas Liability. Seller acknowledges and accepts any and all greenhouse gas liability and costs resulting from federal, state, regional, or local legislation or government rules requiring the Parties to pay taxes or obtain GHG emissions allowances or other rights to emit greenhouse gas (a) for the generation, delivery or sale of (or receipt and purchase of) Energy at the Delivery Point pursuant to this Agreement.

19.13 No Recourse to Buyer's Members. Seller hereby acknowledges that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to an agreement executed by the Cities of Davis and Woodland, and the County of Yolo (the "**Joint Power Agreement**"), that Buyer is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Buyer. The Parties shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and the Parties agree that they shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of Buyer's members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer's retail customers in connection with this Agreement.

(This area is intentionally blank)

IN WITNESS WHEREOF, representatives of the Parties have executed this Agreement on the date set forth below, causing this Agreement to be effective as of the Effective Date:

**Yolo County Flood Control and Water Conservation District**

By:________________________________

Name:_____Tim O'Halloran_____________

Title:___General Manager_______________

Date: _______________________________

**Valley Clean Energy Alliance**

By:___________________________________

Name:__________________________________

Title:___________________________________

Date:___________________________________

**EXHIBIT A**
**NOTICES**

| YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("Seller") | VALLEY CLEAN ENERGY ALLIANCE ("Buyer") |
|---|---|
| **All Notices:**<br><br>Street: 34274 State Hwy 16<br>City: Woodland, CA 95695<br>Attn: Max Stevenson<br><br>Phone: 530-662-0265<br>Email:mstevenson@ycfcwcd.org | **All Notices:**<br><br>Street: 604 2nd Street<br>City: Davis, CA, 95616<br>Attn: Gordon Samuel<br><br>Phone: 530-446-2755<br>Email: Gordon.samuel@valleycleanenergy.org |
| **Reference Numbers:**<br>Duns: #08-211-0800<br>Federal Tax ID Number: 94-1658520 | **Reference Numbers:**<br>Duns: 081110816<br>Federal Tax ID Number: 82-3782814 |
| **Invoices:**<br>Attn: Barb McGriff<br>Phone: 530-662-0265<br>E-mail: bmcgriff@ycfcwcd.org | **Invoices:**<br>Attn: George Vaughn<br>Phone: 530-446-2752<br>E-mail:George.vaughn@valleycleanenergy.org |
| **Scheduling:**<br>Attn: Anthony Lopez<br>Phone: 530-662-0265<br>Email: alopez@ycfcwcd.org | **Scheduling:**<br>Attn: Day Ahead Trading, Real Time Trading<br>Phone:916-732-5669, 916-732-5177<br>Email:<br>dayaheadtrading@smud.org rtt1@smud.org<br>and rtt2@smud.org |
| **Confirmations:**<br>Attn: Max Stevenson<br>Phone: 530-662-0265<br>Email: mstevenson@ycfcwcd.org | **Confirmations:**<br>Attn: Gordon Samuel<br>Phone: 530-446-2755<br>Email: Gordon.samuel@valleycleanenergy.org |
| **Payments:**<br>Attn: Barb McGriff<br>Phone: 530-662-0265<br>E-mail:bmcgriff@ycfcwcd.org | **Payments:**<br>Attn: George Vaughn<br>Phone: 530-446-2752<br>E-mail:George.vaughn@valleycleanenergy.org |
| **Wire Transfer:**<br>BNK: River City Bank<br>ABA: 121133416<br>ACCT:0610407080 | **Wire Transfer:**<br>BNK: River City Bank<br>ABA: 121133416<br>ACCT: 2814556206 |

**Attachment B**

**Indian Valley Hydro Facility Resolution**

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020-___**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING A POWER PURCHASE AGREEMENT WITH YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, on June 1, 2018, Valley Clean Energy (VCE) began receiving energy from the Indian Valley Hydro Facility through a power purchase agreement (PPA) between Sacramento Municipal Unified District (SMUD) and Yolo County Flood Control and Water Conservation District (YCFCWCD), to terminate May 31, 2020;

**WHEREAS**, the Indian Valley Hydro Facility is a three (3) Megawatt (MW) local renewable small hydroelectric facility located at the Indian Valley Reservoir in Lake County, California;

**WHEREAS,** a PPA was renegotiated to be directly between VCE and YCFCWCD effective June 1, 2020 expiring May 31, 2025.

**NOW, THEREFORE,** the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Power Purchase Agreement (PPA) between VCE and YCFCWCD for approximately 3 MW local renewable small hydroelectric facility (Indian Valley Hydro Facility) is hereby approved.

2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, is authorized to approve minor changes to the PPA so long as the term and price are not changed.

///
///
///

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____________ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_______________________________________
Don Saylor, VCE Chair

__________________________________
Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with YCFCWCD (Redacted)

**Attachment A**

**Power Purchase Agreement with**
**Yolo County Flood Control and Water Conservation District**
**(Redacted)**

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 12**

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Approval of Amendment to Task Order of the SMUD Professional Services Agreement

Date: May 14, 2020

**RECOMMENDATION:**

Adopt a resolution authorizing the Interim General Manager to sign Amendment 16 to Task Order 2 (Data Management and Customer Call Center Services).

**BACKGROUND AND ANALYSIS:**

On October 12, 2017 the VCE Board approved a Professional Services Agreement with the Sacramento Municipal Utility District (SMUD) and Task Orders 1 and 2 to provide Program Launch Support, and Data Management and Customer Call Center Services, respectively. Soon thereafter, a series of additional Task Orders were added to the Agreement, including Task Order 3 to provide Wholesale Energy Services and Task Order 4 to provide Operational Staff Services to VCE.

Amendment 16 to SMUD agreement Task Order 2 (Data Management and Customer Call Center Services) authorizes the configuration of VCE's billing system to enable vintage year specific rates. The result will be that all VCE customers are billed at rate parity with PG&E, regardless of PCIA vintage.

PG&E sets a customer's Power Charge Indifference Adjustment (PCIA) vintage when the customer departs PG&E bundled service. The vintage year is on a July-June cycle, and most VCE customers were enrolled in June 2018. As a result, the vast majority of VCE's current customer base has a 2017 PCIA vintage year. However as new premises are constructed, NEM customers are enrolled, and the City of Winters customers enroll next year, the diversity of customer vintages will increase. Legacy NEM customers that enroll in VCE between January and June 2020 have (or will have) a 2019 PCIA vintage. Customers enrolling between July and December will have a 2020 PCIA vintage. Winters will enroll in January 2021, giving Winters residents a 2020 PCIA vintage.

Customer generation charges are the sum of PCIA (charged by PG&E for past generation costs) and Franchise Fee Surcharge (FFS—paid to local governments for utility rights of way), and VCE generation charges. VCE's current rate policy is for the sum of these charges to be equal to PG&E unbundled generation rates. To put it in the form of an equation—

VCE Gen Rate = PG&E Gen Rate – PCIA - FFS

In order to comply with existing VCE policy and match PG&E's generation rate, when the PCIA varies, VCE's generation rate needs to vary with it. Since the PCIA cost varies in each vintage year, this Amendment is needed to enable that capability. With this change, VCE's total charges to customers will match PG&E charges regardless of PCIA vintage.

VCE's billing system was initially constructed to apply a single set of VCE rates for all customers. As a result, customers on a 2018 or later PCIA vintage receive a bill with VCE rates set based on the 2017 vintage, but PCIA and FFS billed from PG&E on the customer's actual PCIA vintage. The sum of VCE and PG&E charges are slightly higher than the customer's unbundled generation rate as defined in their rate tariff. This change will apply the VCE rate based on their PCIA vintage assigned by PG&E.

In addition, this change updates the bill display to make the bill easier for customers to understand. The bill will display the generation charges for each billing determinant at the full PG&E unbundled generation rate, rather than unbundled generation minus PCIA minus FFS. Below the VCE billing determinant charges, the blue bill will display PCIA and FFS credits. These credits can be tied to charges on the PG&E side of the bill. This updated bill display makes it easier for customers to reference their billing determinant prices directly to their rate tariff.

**Financial Impact:** As the functionality for this billing change has already been developed, VCE's cost impact is limited to configuration and testing. The cost for this technology configuration is $30,000, payable as a fixed fee when the billing change goes live in mid-July. This cost change will be budgeted in the FY2020/2021 draft operating budget, which will be presented to the Board for approval at the June 11, 2020 meeting.

**CONCLUSION**

Staff is recommending the VCE Board adopt the attached resolution authorizing the Interim General Manager to sign Amendment 16 to Task Order 2 (Data Management and Customer Call Center Services).

**<u>Attachments</u>**

1. Amendment 16 to Task Order 2 (Data Management and Customer Call Center Services)
2. Resolution Authorizing Interim General Manager to sign Amendment 16 to the VCE-SMUD Professional Services Agreement

**AMENDMENT 16 TO EXHIBIT A: Scope of Services**

**A.4 Task Order 2 – Data Management and Customer Call Center Services**

SMUD and VCEA agree to the following services, terms, and conditions described in this Amendment 16 to Exhibit A, Task Order No. 2 (Amendment 16), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Amendment 16 conflict with any general provisions in the Agreement or Task Order 2, the provisions of this Amendment 16, shall take precedence. Capitalized terms used in this Amendment which are not defined in this Amendment will have the respective meanings ascribed to them in the Agreement or a previous Amendment thereof.

The Effective Date of this Amendment 16 is the date of last signature below.

1. **<u>Section 1, SCOPE OF WORK, is amended to add Section 1.11 below:</u>**

**"1.11 IMPLEMENTATION OF VINTAGE YEAR-BASED BILLING**

**1.11.1 Scope of Work**

VCE currently sets rates by taking PG&E Unbundled generation rates and subtracting the 2017 Power Charge Indifference Adjustment (PCIA) and Franchise Fee Surcharge (FFS), as the majority of VCE's current customer base is on the 2017 vintage year. The result of this method is that customers who are not on the 2017 vintage year do not experience exact rate parity with PG&E bundled customers. This technology configuration will allow VCE to bill based on the PG&E assigned vintage year of each customer.

To implement the Vintage Year Rate Configuration, SMUD will:

- Establish individual rate configurations for all rates (inclusive of billing determinants) supported by PG&E
- For each Rate configuration, VCE Generation Rate will be calculated as follows:
    - Standard Green: (1.00 * PG&E Unbundled Generation Rate)
    - UltraGreen: Standard Green Rate + $0.015 adder
        - UltraGreen is not part of rate table and instead appears as a separate line item adder on a customer's bill.
- Support adding a rate configuration for each new vintage year in the future, starting with 2020 (Vintage Year Rates)
    - Includes rate configuration for FFS by vintage year
    - Includes rate configuration for PCIA by vintage year
- For each vintage year fee, PCIA and FFS credits will be calculated as follows:
    - Total kWh * (-) Vintage Year PCIA
    - Total kWh * (-) Vintage Year FFS

- For customers with no vintage year identified
    - If it is an existing service point with a previous customer that had a vintage year, that vintage year will be used
    - If no such data point can be found, the default vintage year for that PG&E town or territory will be used
- For customers with vintage year before 2017, the most current 2017 Vintage Year Rates will be used
- For customers with vintage year later than the current year, the most current Vintage Year Rates of the current year will be used
    - Example: Current year is 2019, vintage year of 2020 found on customer record, 2019 vintage year will be used in place of 2020
- Rate configuration will support different rate discount for each vintage year and Rate Product
    - Example, Standard Green customers on 2021 vintage year may receive a 1% discount, while all other vintage year rates are calculated based on a 0% discount
- Allow for changes to rate discount
    - For example, Standard Green is currently calculated with 0% Discount: (1.00 * PG&E Unbundled Generation Rate)
    - Set up Rate Configuration to allow for changing from 0% to 1% which would effectively apply the Discount as follows (0.99 * PG&E Unbundled Generation Rate)
- Rebills
    - Rebills will utilize the updated configuration
    - The Vintage Year Rate used to Re-Bill a customer will be based on the effective Vintage Year Rates for the bill period affected
    - The Rate Product Discount used to Re-Bill a customer will be based on the effective Rate Product Discount for the bill period affected
- Blue Bill display
    - Add new bill description for the PCIA and FFS fees. Examples:
        - “PCIA Credit”
        - “FFS Credit”
    - PCIA and FFS credits will appear as a negative charge or credit on the VCE blue bill charges
    - If VCE adopts a rate discount in the future, the Rate Product Discount will appear as a negative charge or credit on the VCE blue bill charges
    - Rate Product UltraGreen will appear as an adder on the VCE blue bill charges

Configuration Changes

- IOU Initiated Changes include, but not limited to:
    - Rate Price Changes
    - FFS and PCIA Changes
    - New IOU Rate Schedules
    - Rate Schedule Structural Rate Changes

        - Examples: Changes to Seasonal Time Periods; Changes to TOU Time Definitions
- VCE Initiated Changes include, but not limited to:
    - Rate Product Discount Changes
        - Example: Standard Green 0% change to 1%
    - New Rate Products
    - Vintage Year Based Rate Product Discounts
        - Example: Standard Green 0% for all customers changed to 1% for 2018 vintage year and 1.1% for all other customers
- Out of scope, not included in the IOU or VCE Changes:
    - Messaging to customers related to an IOU Initiated or VCE Initiated Changes.

**1.11.2 Deliverables and Due Dates**

The schedule for the implementation of vintage year-based billing estimated to be six (6) weeks, and includes the following milestones and due dates:

| | Milestone | Responsible Party | Due Date |
|---|---|---|---|
| 1 | Task Order Amendment executed | VCE | May 30, 2020 |
| 2 | Configuration complete | SMUD | June 30, 2020 |
| 3 | Go-live date | SMUD | July 15, 2020 |

**1.11.3 Schedule**

It is estimated that the Scope of Services in this task will be completed in six (6) weeks from the Amendment execution due date of this Amendment 16, and SMUD will implement the technical solution by mid-July 2020."

**Section 4, COMPENSATION FOR SERVICES is amended to add Section 4.7, *Implementation of Vintage year-based billing,* as follows:**

"The fixed fee for the Implementation of a vintage year-based billing is $30,000."

**Section 5, PAYMENT TERMS, is amended to add the following:**

"SMUD will invoice the fixed fee for the Implementation of vintage-year based billing upon completion, and payment will be due net thirty (30) days from date of the invoice."

[Signature Page follows]

**SIGNATURES**

The Parties have executed this Amendment 16, and it is effective as of the date of last signature below.

**Valley Clean Energy Alliance**

**By:** ______________________________

**Name:** ______________________________

**Title:** ______________________________

**Date:** ______________________________

**Approved as to Form:** ______________________________

**Sacramento Municipal Utility District**

**By:** ______________________________

**Name:** ______________________________

**Title:** ______________________________

**Date:** ______________________________

**Approved as to Form:** ______________________________

## VALLEY CLEAN ENERGY ALLIANCE

## RESOLUTION NO. 2020-___

## A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT 16 TO TASK ORDER 2 TO THE SACRAMENTO MUNICIPAL UTILITIES DISTRICT PROFESSIONAL SERVICES AGREEMENT AND AUTHORIZING INTERIM GENERAL MANAGER TO SIGN

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, on August 31, 2017, the VCE Board considered a proposal by the Sacramento Municipal Utilities District ("SMUD") to provide program launch and operational services and subsequently directed VCE staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board;

**WHEREAS**, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCE to provide Community Choice Aggregate (CCA) support services;

**WHEREAS**, On October 12, 2017 the VCE Board approved the Master Professional Services Agreement and Task Order 1 (technical and analytical services) and Task Order 2 (Data Management and Call Center Services) to provide program launch and operational services consistent with the SMUD proposal and VCE Board direction;

**WHEREAS**, in October 2018, Amendment 4 to Task Order 2 updating VCE's base program from "LightGreen" to "Standard Green" was approved;

**WHEREAS**, in April 2019, Amendment 10 to Task Order 2 adding detail to SMUD's invoicing methodologies in the Compensation for Services section updating was approved;

**WHEREAS**, in June 2019, Amendments 11 and 12 to Task Order 2 implementing the Annual Dividend program and second Net Energy Metering (NEM) True-Up Policy was approved;

**WHEREAS**, in August 2019, Amendment 13 to Task Order 2 updating data management and customer call center service rate was approved; and,

**WHEREAS,** there is a need by VCE to bill customers vintage year specific Power Charge Indifference Adjustment (PCIA) rates.

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. Approve Amendment 16 to Task Order 2 (Data Management and Call Center Services) authorizing the configuration of VCE's billing system to enable vintage year specific rates; and,

2. Authorize Interim General Manager to sign Amendment 16.

**PASSED, APPROVED AND ADOPTED**, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _______________, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_______________________________________
Don Saylor, VCE Chair

____________________________________
Alisa M. Lembke, VCEA Board Secretary

Attachment: EXHIBIT A - Amendment 16 to Master Professional Services Agreement Task Order 2

## EXHIBIT A

## AMENDMENT 16 TO TASK ORDER 2 (DATA MANAGEMENT AND CALL CENTER SERVICES)

**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 13**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

**SUBJECT:** Rugged Solar Power Purchase Agreement Approval

**DATE:** April 9, 2020

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**RECOMMENDATION**

Staff recommends the Board adopt a resolution that:

1. Approves the Power Purchase Agreement (PPA) by VCEA for 100% of the output for 20 years of the Rugged Solar Project under development by Rugged Solar LLC (Rugged) provided the counterparty (or counterparty's contractor) executes a Project Labor Agreement (PLA) by June 10, 2020.
2. Authorize the Interim General Manager to execute the PPA substantially in the form attached and authorize to Interim General Manager, in consultation with General Counsel, to make minor changes to the PPA so long as the term and price are not changed.

**BACKGROUND**

On August 13, 2018, SMUD, on behalf of VCEA, issued a solicitation for Long Term Renewable power supply. Responses, which were received on September 17, 2018, included proposals from 13 developers for 32 projects, of which 23 were unique (some developers bid variants of the same project).

The Board received multiple updates on the solicitation process throughout 2018 and 2019. The solicitation and evaluation of proposals were managed by SMUD and overseen by VCEA staff. The VCEA team that developed and negotiated the Power Purchase Agreement (PPA) included highly experienced SMUD staff, the VCEA Interim General Manager, and VCEA's regulatory counsel Kevin Fox of Keyes and Fox.

**Pass/Fail Consideration**

After compiling and consolidating the technical details from each response, Projects were evaluated for Pass/Fail criteria. The Board will recall that the solicitation for proposals made clear that projects, at a minimum, had to satisfy certain criteria to even be considered. Those criteria with effective pass/fail scoring included:

**Table 1. Pass/Fail Criteria**

| Criteria | Pass/Fail Threshold |
|---|---|
| Siting | Projects cannot be proposed for land with a prime agricultural designation. Projects cannot be proposed for areas that are designated as Renewable Energy Transmission Initiative ("RETI") Category 1 or 2. Category 1 lands are those identified where development is prohibited by law or policy. Category 2 lands are those where cultural or environmental conflicts would be highly likely and/or controversial. |
| Development Status | Projects must at least have filed a permit application with the relevant land use authority and received an acknowledgment of the filing from such authority.<br>Projects must provide evidence of site control. |
| Out-Of-State Resources | Projects must be located within California. |
| Interconnection Status | Projects must already be in an interconnection queue and have requested full capacity deliverability for the project interconnection. |

**Preliminary Screening**

The next step was to perform a preliminary screening that was used to reduce the project list to a limited number of projects that would then receive an economic evaluation and consideration for a short list. In the preliminary screening, projects were ranked. Ranking criteria included:

- Permit progress
- Status of Cultural/Environmental surveys
- Whether or not sensitive cultural or habitat resources were identified
- CEQA status
- Whether wildlife permits were needed and obtained
- Location of project (northern California preferred)
- Whether the project was local, regional or other
- Whether project could be online and delivering energy by April 1, 2021

Only the 9 highest ranked projects were selected to move on to the short list evaluation stage.

**Short List Evaluation**

Economic evaluations were performed on the 9 projects, where the levelized contract prices were compared to expected value from sales of the power component back to the CAISO and resource adequacy capacity value. The result of the economic evaluations was to determine an implicit renewable premium for each project, compared to VCEA's current renewable costs. The short-term Renewable Energy Certificate (REC) contracts in VCEA's portfolio have an average renewable premium of $13.79/MWh.

Key factors in determining which projects to short list were:

- At least one project selected could deliver any significant energy in 2020.
- Whether total energy delivered from all selected projects will meet the legal requirement for significant energy under long term contract in 2021.
- Price (value)
- Selection of projects to supply at least the VCEA minimum 42% renewable content in 2021 (and beyond).

**Short List Selection**

Two projects were short listed; the Westlands solar project and Rugged. The Westlands-Aquamarine project is currently under contract with VCEA as of Feb 14, 2020. Neither of the projects are considered either Local or Regional projects by VCEA's definition. They both were selected for the following key reasons:

- The two projects provided a renewable volume totaling at least 42% of VCEA overall energy portfolio starting in 2021
- Both projects had favorable pricing
- No other combination of projects provided enough energy in 2021 to satisfy the RPS minimum long-term contracting requirements which begin in 2021.

**Remaining Selection Process**

Following the short-list process, staff executed letters of intent, collected short list deposits and began PPA negotiations. The first PPA has been executed with Aquamarine Westside, LLC. This staff report discusses the second PPA negotiated with the Rugged project in San Diego County.

**RUGGED SOLAR PROJECT**

Rugged solar project is located on approximately 765 acres in unincorporated San Diego County. The site is approximately 70 miles east of San Diego.

The project is in late development with a long term lease for the land in place, an interconnect agreement with CAISO and SDG&E, and environmental permits in place. The Major Use Permit (land use) is currently being modified to reflect the specific solar technology now intended to be employed.

Once the PPA and financing are finalized, construction should begin by December 1, 2020, and Commercial Operation should be achieved by December 1, 2021.

## KEY PPA TERMS AND CONDITIONS

### Price and Impact to VCEA Budget

$[Price Redacted]/MWh with 0% escalation. PPA price is held flat, or levelized, across the 20 year term. The pricing is two-tiered, and will be reduced slightly if Rugged does not achieve Full Capacity Deliverabilty Status (FCDS) with CAISO. FCDS is discussed later in this report.

We expect REC costs from Rugged, as a portion of the overall PPA cost, to be favorable to VCEA's budget. For 2020, VCEA paid an average of $13.79/MWh for RECs alone. This PPA is structured as fixed price, versus VCEA's short term renewable contracts, which are based on index power price plus a fixed REC premium. In addition to contributing savings on the average cost of RECs in the near term, a fixed price contract reduces the volatility in VCEA's future power costs.

This project is expected to yield approximately 220,000 MWh per year. Based on historical energy prices at the project's point of delivery, staff have estimated an implicit renewable premium of ($3.31)/MWh for the project in 2021, compared to VCEA's average short-term renewable cost in 2020 of $13.79/MWh. This reduces VCEA's annual renewable costs by approximately $3.8 million. If Rugged achieves FCDS it will also provide Resource Adequacy (RA) capacity which has value but is not included in the $3.8 million cost savings above. An estimate of the RA value is not provided as the CPUC is currently assessing the RA value that solar photovoltaic (PV) projects provide. In any case, any RA value will be in addition to the cost savings noted above.

### Term

A 20 year term was negotiated along with other salient contract terms in order to suit VCEA's long term needs for energy supply as well as other attributes. This term matches up well with the 15 year PPA with Aquamarine. As a result of staggering long-term PPAs, VCEA can avoid large coincident procurement requirements in the future.

### Expected Annual Energy Product/Portfolio Share of Renewable Provided

The expected annual energy production is approximately 30% of VCEAs annual energy retail needs. Table 2 below shows the anticipated combined annaul production for the Rugged and Aquamarine projects.

**Table 2. Incremental Portfolio Contribution from Long Term Renewable PPAs**

| | Project COD | PPA Capacity | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|
| **Short Listed Projects** | | | | | |
| ***Rugged*** | 12/1/2021 | 72 MWs | 11,587 | 222,820 | 221,706 |
| ***Aquamarine*** | 8/1/2021 | 50 MWs | 47,438 | 134,684 | 134,011 |
| ***Project 2 Phase 2*** | 12/1/2021 | 0 MWs | 0 | 0 | 0 |
| ***Project 2 Option*** | 7/1/2022 | 0 MWs | 0 | 0 | 0 |
| **Total Supply** | | 122 MWs | 59,025 | 357,504 | 355,717 |
| **VCEA Retail Load** | | | 740,117 | 739,992 | 741,517 |
| **RPS Minimum Requirements** | | | 35.8% | 38.5% | 41.3% |
| **Incremental Contribution to Renewable Content** | | | 8.0% | 48.3% | 48.0% |

**Full Capacity Deliverability Status**

The project has requested Full Capacity Deliverability Status (FCDS) from the CAISO, which means they have an interconnection agreement for the full output of the Project, and that output can be accommodated by the transmission system. It is possible that upgrades could be completed (at Rugged expense) that would result in Rugged receiving FCDS. If that were to occur the FCDS status is not "locked in" but would be subject to seasonal variation and the CAISO determination of what percentage of project nameplate capacity is going to be eligible for capacity calculations. Having FCDS ensures that VCEA can benefit from the Resource Adequacy Capacity allocated to the Project.

Notwithstanding all of the above, staff recommends proceeding with the PPA even if the project is ultimately declared "energy only" and does not receive FCDS with CAISO.

**CONCLUSION**

Based on results from the solicitation process and PPA negotiation, VCEA and SMUD staff believe the price and terms of the PPA support VCEA's policy objectives, help meet regulatory requirements, and are competitive in the current market for utility scale solar PV in California.

**REQUESTED ACTION**

Adopt the resolution detailed above.

**Attachments:**

1. Attachment A - Rugged Power Purchase Agreement
2. Resolution

**Attachment A**

**Rugged Power Purchase Agreement**

EXECUTION VERSION

# RUGGED SOLAR

# POWER PURCHASE AGREEMENT

**between**

**VALLEY CLEAN ENERGY ALLIANCE**

**(as “Buyer”)**

**and**

**RUGGED SOLAR LLC**

**(as “Seller”)**

**dated as of**

**April 10, 2020**

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# POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is entered this 10th day of April, 2020 (the "Effective Date"), by and between Valley Clean Energy Alliance, a California Joint Powers Authority ("Buyer"), and Rugged Solar LLC, a Delaware limited liability company ("Seller"). Buyer and Seller are each individually referred to herein as a "Party" and collectively as the "Parties".

## W I T N E S S E T H:

**WHEREAS**, Buyer is a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq*.) that provides retail electricity service to customers within its service area;

**WHEREAS**, Seller is developing and will own and operate Rugged Solar, which is expected to be comprised of 71.88 MW-AC of solar photovoltaic systems, located at 2750 McCain Valley Road in San Diego County, California, which will be dedicated to Buyer; and

**WHEREAS**, Seller desires to sell and deliver, and Buyer desires to purchase and receive, all of the Energy, Green Attributes, and Capacity Rights (as each are defined below) from the Facility (as defined below), on the terms and conditions set forth herein;

**NOW**, **THEREFORE**, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

## ARTICLE 1
## DEFINITIONS

### 1.1 *Definitions*.

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement have the meanings specified in this Article 1; (ii) the singular includes the plural and vice versa; (iii) references to "articles," "sections," "schedules," "appendices" or exhibits" (if any) are to Articles, Sections, Schedules, Appendices or Exhibits hereof; (iv) all references to a particular entity or pricing index include a reference to such entity's or pricing index's successors and permitted assigns; (v) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) references to this Agreement include a reference to all appendices, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (viii) the masculine includes the feminine and neuter and vice versa; (ix) the words "include" and "including" or similar words are not words of limitation and shall be deemed to be followed by the words "without limitation"; (x) all references to dollars are U.S. dollars, and all amounts due, and payments made, under this Agreement, shall be paid in U.S. dollars; and (xi) "or" is not necessarily exclusive. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

***"Affiliate"*** means, with respect to any Person each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person.

***"After-Tax Basis"*** means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the "Base Payment") supplemented by a further payment (the "Additional Payment") to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all federal, state and local income taxes required to be paid by such Person in respect to the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount of the Base Payment that was to have been received by such Person. Such calculations shall be made on the basis of the amounts of the highest generally applicable federal, state and local income tax applicable to a corporation for all relevant periods and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

***"A.M. Best"*** means A.M. Best Company, Inc.

***"Applicable Law"*** means, with respect to any Person or the Facility, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and Permits, directives and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person or the Facility (as the case may be).

***"Available Capacity"*** means, for any given point in time, the maximum instantaneous generation capacity of the Facility at the Delivery Point (expressed in MW).

***"Available Energy"*** means the quantity of Energy, expressed in MWh, that Seller would have generated and delivered to the Delivery Point from the Facility, but for (i) a Buyer Curtailment Order, or (ii) a suspension of Seller's obligation to make Energy available due to a Buyer Event of Default pursuant to Section 3.4(a), in either case from equipment that would otherwise have been mechanically and electrically available for generation of Energy. The amount of Available Energy shall be determined by Seller using the best information available at the time including weather conditions or physical limitations and any other factors relevant to the determination. Seller shall be responsible for collecting and archiving Site insolation in order to determine the Available Energy from the Facility.

***"Back-up Meter"*** means a CAISO approved revenue quality meter installed by Seller pursuant to Section 4.2(d) that is capable of recording Energy delivered to Buyer at the Delivery Point.

***"Bankruptcy Code"*** means the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), as amended, and any successor statute.

***"Bid"*** has the meaning set forth in the CAISO Tariff.

***"Business Day"*** means any day other than a Saturday or Sunday or any other day on which banks in the State of California are permitted or required to remain closed.

***"Buyer Cash Collateral"*** means cash collateral deposited by Buyer with Seller, in respect of which Buyer hereby grants to Seller a first priority, perfected security interest thereon (including on any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof).

***"Buyer Curtailment Order"*** means a telephonic or automated instruction (it being acknowledged that Buyer shall endeavor to promptly confirm any such telephonic instructions in writing), which is issued by Buyer, in its sole discretion, for a reason other than those enumerated in the definition of Curtailment Period, directing that Seller: (1) reduce generation from the Facility by an amount, in whole MW increments, and for the period of time set forth in such order; or (2) bid economically so that if the CAISO Locational Marginal Price (as defined in the CAISO Tariff) is below a threshold, the Facility is not awarded a Schedule (as defined in the CAISO Tariff) and does not generate. For avoidance of doubt, Buyer's communication to Seller to curtail the Facility for reasons enumerated in the definition of Curtailment Period shall not constitute a Buyer Curtailment Order.

***"Buyer Letter of Credit"*** means an irrevocable, transferable standby letter of credit issued for the benefit of Seller by a U.S. commercial bank or a U.S. branch of a foreign bank, with such bank having a Credit Rating of at least BBB from S&P or Baa2 from Moody's, in a form based on and similar to the letter of credit set forth in Exhibit G, mutatis mutandis, and otherwise in a form and with terms and conditions reasonably acceptable to Seller.

***"Buyer Performance Assurance"*** means (A) Buyer Cash Collateral in an amount no less than the Buyer Performance Assurance Amount, (B) a Buyer Letter of Credit with a face amount no less than the Buyer Performance Assurance Amount or (iii) a combination of Buyer Cash Collateral and a Buyer Letter of Credit in an aggregate amount no less than the Buyer Performance Assurance Amount.

***"Buyer Performance Assurance Amount"*** means an amount equal to $[redacted] per MW of Contract Capacity.

***"CAISO"*** means the California Independent System Operator Corporation.

**"*CAISO Penalties*"** means any fees, liabilities, assessments, sanctions, penalties or similar charges assessed, or otherwise billed to a Party, by the CAISO.

***"CAISO Settlement Price"*** means the Locational Marginal Price (as defined in the CAISO Tariff) at the Delivery Point for each Settlement Interval (as defined in the CAISO Tariff).

***"CAISO Tariff"*** means the CAISO Operating 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, supplemented or replaced (in whole or in part) from time to time; provided, if there is a conflict between the CAISO Operating Agreement and Tariff, and the BPM, the CAISO Operating Agreement and Tariff will control.

***"California Public Records Act"*** means California Government Code Section 6250 *et seq.*, as amended or supplemented from time to time.

***"California Renewables Portfolio Standard"*** means the renewable energy program and policies established and codified in California Public Utilities Code Sections 399.11, *et seq*. and California Public Resources Code Sections 25740 et seq., as implemented by the CPUC and CEC, as such program and policies may be amended or supplemented from time to time.

***"Capacity"*** means the maximum instantaneous electric generating capacity of the Facility, as measured at the Delivery Point (expressed in MW-AC) when operated in compliance with the Interconnection Agreements and consistent with the manufacturer's recommended power factor and operating parameters, and as further defined in **Exhibits B and B-1**.

***"Capacity Rights"*** means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future Resource Adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility. Capacity Rights shall be deemed to include all Resource Adequacy benefits, if any, associated with the Facility and its Capacity. Capacity Rights are measured in MW and shall exclude Energy, Green Attributes, and any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

***"Cash Revenues"*** means, for any period, the total amount of Buyer's cash revenues received for such period, as set forth in Buyer's statement of cash flows (or other applicable financial statement or document) for such period prepared in accordance with Governmental Accounting Standards Board requirements; provided, however, that Cash Revenues shall not include any non-recurring or extraordinary items for such period.

***"CEC"*** means the California Energy Commission.

***"CEC Certification and Verification"*** means that the CEC has certified or pre-certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR.

***"CIRA Tool"*** means the CAISO Customer Interface for Resource Adequacy.

**"*Commercial Operation*"** means the status of the Facility upon Seller's satisfaction of all of the conditions set forth in Section 2.6(a).

***"Commercial Operation Certificate"*** is defined in Section 2.6(a) and shall be in the form attached hereto as **Exhibit J.**

**"*Commercial Operation Date*"** means, subject to Section 2.6(a), the date on which Commercial Operation has commenced.

***"Compliance Showings"*** means Buyer's compliance with the Resource Adequacy obligations of the CPUC for an applicable Showing Month.

***"Contract Capacity"*** means Capacity of 71.88 MW-AC, as may be adjusted pursuant to Section 2.5(b), to which Buyer has the exclusive right during the Term.

***"Contract Price"*** is set forth in **Exhibit A** and shall differ depending on whether Seller has obtained Full Capacity Deliverability Status.

***"Contract Year"*** means a twelve (12) calendar-month period, with the first Contract Year commencing at 00:00 am PPT on the first day of the first full month following the Commercial Operation Date and each new Contract Year beginning on the anniversary date thereof.

**"*Costs*"** means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) 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 this Agreement and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

***"Coverage Ratio"*** means, for any twelve (12) month period ending on a Coverage Ratio Test Date, the ratio of (A) the sum of (1) Cash Revenues during such period plus (2) the Total Cash Reserve Balance as of such Coverage Ratio Test Date less (3) Total Expenditures during such period to (B) the Seller PPA Payment for such period. The Coverage Ratio shall be calculated for each Coverage Ratio Test Date based on audited financials, if available; otherwise, the Coverage Ratio for such Coverage Ratio Test Date shall be calculated based on unaudited financials prepared by Buyer.

***"Coverage Ratio Test Date"*** means the last day of Buyer's fourth fiscal quarter of each fiscal year.

***"CPUC"*** means the California Public Utilities Commission.

**"*Credit Rating*"** means, with respect to a Person, on any date of determination, (a) the ratings assigned by Moody's or S&P with respect to such Person's long-term unsecured, senior indebtedness not supported by third party credit enhancement, or (b) if such Person does not have such a rating, then the rating assigned to such Person by Moody's or S&P as its corporate credit rating or issuer rating.

***"Curtailment Period"*** means the period of time during which there is any reduction in Energy deliveries to the Delivery Point as a result of any of the following:

(a) The CAISO or other Governmental Authority orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for any reason;

(b) The Transmission Provider, or other Governmental Authority having similar authority or performing similar functions, orders, directs, alerts or provides notice to a Party to curtail Energy deliveries for any reason;

(c) Scheduled or unscheduled maintenance or construction on the CAISO, Transmission Provider, or other Governmental Authority's transmission or distribution facilities that prevents Buyer from receiving Energy at, or Seller from delivering Energy to, the Delivery Point;

(d) A curtailment by a third party (*i.e.*, an entity other than Seller) pursuant to the Interconnection Agreements (or a curtailment by Seller pursuant to the Interconnection Agreements) solely in the event of an Emergency Condition;

(e) Such reduction in Energy deliveries is the result of any of the following: (i) a Planned Outage or Forced Outage, (ii) an outage not constituting a Planned Outage or a Forced Outage undertaken to construct, install, maintain, repair, replace, remove or inspect any of its equipment or facilities or in connection with a condition likely to result in significant damage to Seller's equipment or if Seller otherwise reasonably deems such curtailment necessary to protect life or property, (iii) because the interconnection between the Facility and Transmission Provider's Transmission System is otherwise disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreements, or (iv) a Force Majeure Event that prevents either Party from delivering or receiving the Product;

(f) Seller, or Seller's SC, has received a notice from CAISO pursuant to CAISO Operating Procedure No. 2390 (or its successor) having the effect of requiring a reduction during the same time period that Seller, or Seller's SC submitted a Self-Schedule and/or an Energy Supply Bid (each as defined in the CAISO Tariff) that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Facility for such time period.

***"Daily Delay Damages"*** shall equal [redacted] per Day.

***"Day" or "day"*** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time (PPT) on any calendar day and ending at 00:00 hours PPT on the next calendar day.

***"Delivery Point"*** means the pricing node (i.e., "PNode"), more specifically described in **Exhibit C**, where Seller's Interconnection Facilities connect to the Transmission Provider's Transmission System.

***"Delivery Term"*** means the period beginning at 00:00 am PPT on the first day of the first full month following the Commercial Operation Date and continuing through the end of the Term.

***"Downgrade Event"*** occurs if either (i) the lowest of the Credit Ratings of the Seller Guarantor or Buyer (as applicable): (A) is below "BBB-" with respect to S&P or (B) is below "Baa3" with respect to Moody's or (ii) if Seller Guarantor or Buyer (as applicable), ceases to have a Credit Rating, by either Moody's or S&P.

***"Electrical Losses"*** means all losses between the Facility and the Delivery Point, including any transmission or transformation losses between any of the Facility's Meters and the Delivery Point.

***"Eligible Intermittent Resource Protocol"*** or ***"EIRP"*** means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

***"Eligible Renewable Energy Resource"*** or ***"ERR"*** has the meaning set forth in California Public Utilities Code Section 399.12, as may be amended or supplemented from time to time.

***"Emergency Condition"*** means a condition or situation:

(a) In the reasonable judgment of the Party making the claim, is imminently likely to endanger life or property, or is necessary to protect persons, or third parties' property from damage or interference caused by the Facility or improperly operating protective devices;

(b) That, in the case of Seller, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse impact on or damage to the security or operation of Seller's Interconnection Facilities or the Facility;

(c) That will result in Buyer or Seller being unable to meet specific FERC or NERC standards applicable to them regarding the transmission of Energy; or

(d) That is an abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission/distribution facilities or generation supply that could adversely affect the reliability of the bulk electric or interconnecting utility systems.

For avoidance of doubt, the following are not Emergency Conditions: (i) Buyer's ability to purchase energy or Green Attributes at a lower price; or (ii) Buyer's inability to use or resell Energy or other generation.

***"Energy"*** means the as-available, net electric energy output generated or discharged by the Facility, which shall exclude station use, auxiliary loads or other electric energy consumed by the Facility and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

***"Environmental Contamination"*** means the introduction or presence of hazardous substances or hazardous materials (as such term or terms are defined by Applicable Law, including 42 U.S.C. § 9601(14), the definition of the terms "hazardous substance" or "hazardous material" in any Applicable Law to exclude petroleum and natural gas notwithstanding, including all forms of petroleum and natural gas at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, or present a risk under Applicable Law that the Site will not be available or usable for the purposes contemplated by this Agreement.

***"Excused Energy"*** means the quantity of Energy, expressed in MWh, that Seller would have produced and delivered to the Delivery Point from the Facility, absent: (i) a Force Majeure Event, (ii) a Curtailment Period, except for a Curtailment Period that results from a Forced Outage or Planned Outage, (iii) a Buyer Curtailment Order, or (iv) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii). For avoidance of doubt, Energy that Seller would have produced and delivered but for a Forced Outage or Planned Outage shall not be counted as Excused Energy. The amount of Excused Energy shall be determined by Seller using the best information available at the time including weather conditions or physical limitations and any other factors relevant to the determination. Seller shall be responsible for collecting and archiving Site insolation in order to determine the Excused Energy for the Facility.

***"Expected Energy"*** means the Energy expected to be delivered to the Delivery Point for each Contract Year as specified in **Exhibit H**.

***"Facility"*** means Seller's Rugged Solar solar photovoltaic facility, located in San Diego County, California, together with any and all additions, replacements or modifications thereto, together with other electrical infrastructure, including metering, Seller Interconnection Facilities, SCADA System, and a step-up transformer, as more particularly described in **Exhibits B and B-1**.

***"Facility Construction"*** means the start of construction for the Facility, as demonstrated by Seller's physical movement of soil at the Site at a sufficient level to reasonably demonstrate that Seller is preparing the Site for the construction of the Facility.

***"Facility Operator"*** means Seller or an Affiliate of Seller that operates the Facility.

***"FERC"*** means the Federal Energy Regulatory Commission.

***"Force Majeure Event"*** means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the Effective Date, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in clause (iv) shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure Event shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure Event does not include any of the following: (1) any requirement to meet an Applicable Law or any change (whether voluntary or mandatory) in any Applicable Law that may affect the value of the Product; (2) events arising from the failure by Seller to operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost of a Party to perform under this Agreement (except as expressly provided for otherwise herein); (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Product at a price in excess of those provided in this Agreement, or Buyer's ability to purchase similar product at a price below that provided in this Agreement ; (6) curtailment or other interruption of any Transmission Service, except due to Force Majeure; (7) failure of third parties to provide goods or services essential to a Party's performance, except due to Force Majeure; (8) Facility or equipment failure of any kind, except due to Force Majeure; or (9) any changes in the financial condition of Buyer, Seller, a Lender, or any subcontractor or supplier impacting the affected Party's ability to perform its obligations under this Agreement.

***"Forced Outage"*** means an unplanned reduction, interruption or suspension of the Facility's ability to generate or deliver Energy to the Delivery Point that is not the result of a Force Majeure Event or a Planned Outage.

***"Forward Certificate Transfer"*** has the meaning set forth in the WREGIS Operating Rules.

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

***"Generator Operator"*** means an operator that meets the requirements of Generator Operator as defined by NERC in its Statement of Compliance Registry Criteria (Revision 6.0), as amended or in a successor document.

***"Governmental Authority"*** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing. For purposes of this Agreement, the term Government Authority shall include FERC, NERC (if applicable), WECC, CAISO, CPUC and CEC.

***"Green Attributes"*** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy from the Facility and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (Nox), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law**,** to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment tax credits, production tax credits associated with the ownership, 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 tax obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

***"Historical Load Served"*** means, for any period, the actual metered MWh served by Buyer during such period, as reported by Buyer to the CAISO in in its T+48 data submission (if applicable) or other applicable data submission mutually agreed by the Parties.

***"Interconnection Agreements"*** means all (a) Large Generator Interconnection Agreements, (b) Distribution Service Agreements, (c) Transmission Service Agreements, (d) Participating Generator Agreements, and (e) Metering Service Agreements (as each are defined in the CAISO Tariff) necessary for Seller to operate the Facility and delivery Energy to the Delivery Point in compliance with this Agreement.

***"Interconnection Study"*** has the meaning set forth in the CAISO Tariff.

***"Interconnection Point"*** means the point of first point of interconnection of the Facility with the Transmission Provider's Transmission System, as more fully described on **Exhibits B and B-1.**

***"Investment Grade"*** means a Credit Rating of at least "Baa3" with respect to Moody's and at least "BBB-" with respect to S&P.

***"Lender"*** means any and all Persons or successors in interest thereof, other than an Affiliate of Seller, (a) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) in connection with the financing of a portfolio of projects that includes the Facility; (b) participating (directly or indirectly) as a Tax Equity Investor; or (c) a lessor under a lease finance arrangement of the Facility.

***"Lender Consent"*** means a Consent and Agreement in the form of **Exhibit E**.

***"Letter of Credit"*** means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution and in the form of **Exhibit G**.

***"Local Capacity Area Resources"*** has the meaning set forth in the CAISO Tariff.

***"Losses"*** means, with respect to the non-defaulting 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, determined in a commercially reasonable manner, which economic loss (if any) shall be the loss (if any) to such Party represented by the difference (if any) between the present value of the payments required to be made during the remaining Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. The non-defaulting Party's Losses shall be zero ($0) if such Party receives an economic benefit due to the termination of this Agreement. If the non-defaulting Party is the Seller, then Losses shall exclude any loss of the PTC, or other federal or state tax credits, grants, or benefits related to the Facility or generation therefrom.

***"Meter"*** means the revenue quality meters, data processing gateways or remote intelligence gateways, telemetering equipment and data acquisition services that are dedicated exclusively to the Facility and are sufficient for monitoring, recording and reporting, in real time, all Energy from the Facility, as required and specified in the CAISO Tariff.

***"Milestone Schedule"*** means Seller's schedule to develop the Facility, as set forth in **Exhibit I**.

***"Minimum Annual Energy Production"*** means for each Contract Year the quantity of Energy specified in **Exhibit F**.

***"Minimum Coverage Ratio"*** means, as of any Coverage Ratio Test Date, 1.20:1.00; provided, however, that if the Historical Load Served as of any Coverage Ratio Test Date has declined by fifteen percent (15%) or more from the immediately preceding Coverage Ratio Test Date, the Minimum Coverage Ratio as of such Coverage Ratio Test Date shall be 1.50:1.00.

***"Moody's"*** means Moody's Investor Service, Inc.

***"MW"*** means a megawatt.

***"MWh"*** means a megawatt hour.

***"NERC"*** means the North American Electric Reliability Corporation.

***"NERC Reliability Standards"*** means standards and rules that are adopted by NERC or WECC and approved by the applicable Governmental Authorities.

***"Net Qualifying Capacity"*** or ***"NQC"*** has the meaning set forth in the CAISO Tariff.

***"Notification Deadline"*** is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

***"Pacific Prevailing Time" or "PPT"*** means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

***"Performance Period"*** means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Periods shall overlap, so that if the first Performance Period is comprised of Contract Years 1 and 2, the second Performance Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided however that a new Performance Period shall begin following any Performance Period in which there is a Shortfall Amount. Thus, for example, if there is a Shortfall Amount for the Performance Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

***"Permits"*** means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority in order to develop, construct, operate, maintain, improve, refurbish and retire the Facility or to forecast or deliver the Product produced by the Facility to Buyer at the Delivery Point.

***"Permitted Transferee"*** means any person or entity who is at least as creditworthy as the Seller on the Effective Date and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating solar, wind or other renewable energy generating facilities in the CAISO market.

***"Person"*** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

***"Planned Outage"*** means an interruption of all or a portion of the Facility's capability to generate or deliver Energy to the Delivery Point that is scheduled in the Outage Schedule delivered to Buyer pursuant to Section 2.9(d)(ii) and is required for inspection, preventive maintenance or corrective maintenance of the Facility.

***"Prime Rate"*** means the interest rate (sometimes referred to as the "base rate") for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the "Prime Rate" from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

***"Product"*** means (i) all of the Energy produced by the Facility, (ii) all of the Green Attributes and Renewable Energy Credits associated with the Energy, and (iii) all of the Capacity Rights, as well as any ancillary services associated with the Capacity of the Facility's operation.

***"Prudent Operating Practices"*** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the solar electric generation industry that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

***"Qualified Institution"*** means a major U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least "A-" by S&P and "A3" by Moody's (without a "credit watch", "negative outlook" or other rating decline alert if its Credit Rating is "A-" by S&P or "A3" by Moody's), and having assets of at least ten billion dollars ($10,000,000,000.00).

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

***"Renewable Energy Credit"*** has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Applicable Law.

***"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. Replacement RA shall not be provided from any generating unit that utilizes coal or coal materials as a source of fuel.

**"*Resource Adequacy*" or "*RA*"** means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.10-04-012, R.11-10-023, R.14-10-010, and R.17-09-020 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

***"Resource Adequacy Plan"*** has the meaning set forth in the CAISO Tariff.

***"SCADA System"*** means the automated system that meters and collects: (a) availability and power generation from the Facility; (b) solar irradiance, temperature and pressure from the Meteorological Station; and, (c) other operational parameters describing the state of the Facility.

**"*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" as set forth in the CAISO Tariff, as amended from time to time.

***"Seller PPA Payment"*** means, (A) prior to the Commercial Operation Date, an amount equal to the Expected Energy in Contract Year 1 multiplied by the applicable Contract Price, and (B) for any period commencing on or after the Commercial Operation Date, the aggregate actual amount of payments required to be made by Buyer to Seller under this Agreement for such period.

***"Seller's Interconnection Facilities"*** means all of the interconnection facilities, control and protective devices, distribution facilities, metering facilities and other equipment and facilities, whether or not the facilities, devices and equipment are owned by Seller, required to connect the Facility with the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System located up to, and on Seller's side of, the Delivery Point, including any modification, addition or upgrades to such facilities.

***"Showing Month"*** means the calendar month of the Delivery Term that is the subject of the related Compliance Showing.

***"Site"*** means the real property located in San Diego County, California on which the Facility is located, as more fully described on **Exhibits B and B-1.**

***"Site Control"*** means that Seller has the right to utilize the Site for the construction and operation of the Facility during the Term pursuant to option(s), lease(s), easement(s) or other legal instrument(s), or any combination thereof.

***"S&P"*** means Standard and Poor's Ratings Group (a division of McGraw Hill Inc.).

***"Supply Plan"*** has the meaning set forth in the CAISO Tariff.

***"Suspension Event"*** means that (A) Buyer has an Investment Grade Credit Rating and (B) no Event of Default with respect to which Buyer is the Defaulting Party has occurred and is continuing.

***"Tax Equity Investor"*** means an equity investor in the Facility that is not an Affiliate of Seller, and whose investment in the Facility is intended to be consistent with the "Safe Harbor" for solar transactions under Revenue Procedure 2007-65 and Announcement 2009-69.

***"Termination Payment"*** means an amount calculated in a manner consistent with Section 3.4(c)(ii).

***"Total Cash Reserve Balance"*** means, as of any date of determination, the aggregate amount of cash reserves set forth on the balance sheet of Buyer as of such date prepared in accordance with Governmental Accounting Standards Board requirements.

***"Total Expenditures"*** means, for any period, the sum of Buyer's power supply costs, general operating expenses, debt service obligations, capital expenditures and any cash expenditures for such period, but excluding the Seller PPA Payment for such period.

***"Transmission Provider"*** means San Diego & Electric Company in its capacity as owner of the facilities used for the transmission or distribution of electric energy at or from the Interconnection Point.

***"Transmission Provider's Interconnection Facilities"*** means all facilities and equipment owned by the Transmission Provider and controlled or operated by CAISO, required to connect the Transmission Provider's Transmission System with the Facility up to, and on the Transmission Provider's side of, the Interconnection Point.

***"Transmission Provider's Transmission System"*** means the facilities owned or operated by the Transmission Provider, and controlled by CAISO, for the transmission of electric energy from the Interconnection Point.

***"WECC"*** means the Western Electricity Coordinating Council.

***"WREGIS"*** means the Western Renewable Energy Generating Information System or any successor program that may be implemented to track and record compliance with the California Renewable Portfolio Standard.

***"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 dated December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

## ARTICLE 2
## SALE AND PURCHASE OF ENERGY

**2.1 *Purchase and Sale of Energy.***

(a) At all times during the Delivery Term, Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, all of the Energy generated by the Facility.

(b) Notwithstanding the foregoing:

(i) Seller's obligation to sell and deliver Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement or the Interconnection Agreements, or (D) a period of Seller suspension pursuant to Section 3.4(b)(ii) due to a Buyer Event of Default.

(ii) Buyer's obligation to accept Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement, or (D) a period of Buyer suspension pursuant to Section 3.4(b)(ii) due to a Seller Event of Default.

(iii) Buyer's obligation to purchase Energy from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement, or (C) a period of Buyer suspension pursuant to Section 3.4(b)(ii) due to a Seller Event of Default.

**2.2 *Contract Price.***

(a) During the Delivery Term, Buyer shall pay Seller the Contract Price (as set forth in **Exhibit A**) for: (i) each MWh of Energy Seller delivers to the Delivery Point from the Facility (which deliveries shall be adjusted to reflect Electrical Losses in accordance with Section 4.2(a)), and (ii) each MWh of Available Energy that Seller would have generated and delivered to the Delivery Point from the Facility. The Contract Price shall differ (as set forth in **Exhibit A**) depending on whether Seller has obtained Full Capacity Deliverability Status for the Facility. The

Contract Price is intended to compensate Seller for all Product and shall become applicable on the Commercial Operation Date.

(b) Test Energy. During the time period, if any, beginning on the day the Facility is first energized and operated in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Delivery Point and up to the Commercial Operation Date, Seller may sell and deliver to Buyer and Buyer shall purchase and accept such Energy at no net cost to Buyer, meaning that Seller shall be responsible for paying all charges and fees associated with the scheduling and delivery of such Energy deliveries and Seller shall receive the CAISO Settlement Price (whether positive or negative) with respect to such Energy deliveries.

(c) Excess Energy. During any Contract Year, the Contract Price for Energy, if any, that is delivered in excess of one hundred and twenty-five percent (125%) of the Expected Energy for such Contract Year ("Excess Energy") shall be the lesser of (i) the CAISO Settlement Price applicable to the Settlement Interval in which such Excess Energy was delivered, or (ii) seventy-five percent (75%) of the Contract Price.

(d) Maximum Energy Delivery. During the Delivery Term, the Contract Price for Energy, if any, that is delivered in excess of the Contract Capacity during any Settlement Interval (as defined in the CAISO Tariff) shall be zero dollars ($0); provided that if the CAISO Settlement Price is negative for any such Settlement Interval, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the CAISO Settlement Price, and (ii) the quantity of Excess Energy.

(e) Transfer Taxes. In addition to the amounts otherwise payable by Buyer in accordance with this Section 2.2, Buyer shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes arising out of or with respect to the purchase or sale of Product ("Transfer Taxes"), but excluding all taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Buyer or Seller) at and beyond the Delivery Point, together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes. Seller shall indemnify and hold Buyer harmless on an After-Tax Basis from and against Transfer Taxes or similar taxes on Product imposed by any taxing authority up to the Delivery Point, including severance taxes and taxes on generation of solar energy and taxes on Seller's income. In all events, property taxes or special assessments that may be levied upon the Facility as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Facility shall be borne by the Seller and paid by Seller when due. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

### 2.3 *Dedication of Product to Buyer.*

Except as otherwise provided for herein, Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of all or any portion of the Product that is to be sold and delivered to Buyer under this Agreement to any person other than Buyer during the Term. During the Term, Seller shall not deliver, or attempt to schedule or deliver, energy to the Delivery Point to satisfy its obligations under this Agreement that was not generated by or attributable to the Facility.

**2.4 *Purchase and Sale of Green Attributes; Tax Credits.***

(a) Buyer shall be entitled to all Green Attributes resulting from the generation of Energy purchased by Buyer pursuant to this Agreement. The consideration for all such Green Attributes is included within the Contract Price. Buyer shall not be entitled to any Renewable Energy Credits or Green Attributes from the generation of Energy that Buyer, for any reason, does not purchase under this Agreement.

(b) Title to the Green Attributes shall pass from Seller to Buyer free and clear of all liens, security interests, claims and encumbrances immediately upon the generation of the associated Energy at the Facility that gives rise to such Green Attributes. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Attributes purchased by Buyer hereunder belong to any person other than Buyer.

(c) At all times during the Delivery Term, Seller shall, at its sole cost, cause the Facility to be registered with WREGIS; implement and maintain all necessary generation information communications required by WREGIS Operating Rules; and report generation information to WREGIS pursuant to WREGIS-approved meters that are dedicated to the Facility and only the Facility. Buyer has established a general account (WREGIS Account Holder ID: 1408) with WREGIS. Within ten (10) Business Days following the commencement of the Delivery Term, Seller shall, at its sole cost: (i) transfer to Buyer's WREGIS account any and all WREGIS Certificates associated with Renewable Energy Credits corresponding to that Energy generated by the Facility and purchased by Buyer, and (ii) pursuant to Section 15.5 of the WREGIS Operating Rules, implement a Forward Certificate Transfer to Buyer's WREGIS account for the WREGIS Certificates associated with all the Renewable Energy Credits generated by the Facility during the Delivery Term. Seller covenants that such Forward Certificate Transfer shall be effective for the remainder of the Delivery Term. Buyer shall comply with all reporting and other requirements of WREGIS with respect to Green Attributes it purchases from Seller; provided, Seller shall provide promptly to Buyer that Facility data and information reasonably necessary in order for Buyer to comply with such WREGIS requirements. Upon termination or expiration of this Agreement, Seller shall rescind the Forward Certificate Transfer and Buyer shall promptly assign and transfer back to Seller any Green Attributes existing in Buyer's WREGIS account not associated with Energy purchased and paid for by Buyer.

(d) Seller shall cooperate reasonably with Buyer, at Buyer's expense:

(i) In order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts, including any rights associated with any renewable energy information or tracking system other than WREGIS that may be established with regard to monitoring, tracking, certifying, or trading such Green Attributes; and

(ii) In any registration by Buyer of the Facility in the renewable portfolio standard or equivalent program in states other than California and other non-California programs in which Buyer may wish to register or maintain registration of the Facility by providing copies of all such information as Buyer reasonably requests for such registration.

(e) As between Buyer and Seller, Seller shall be entitled to all production or investment tax credits and similar tax benefits that are or will be generated by or associated with the Facility.

**2.5 *New Generation Facility.***

(a) Seller's Duty to Construct and Operate Facility. Seller, at no cost to Buyer, shall: (i) design and construct the Facility; (ii) pay all fees, costs, and charges associated with interconnecting the Facility with the Transmission Provider's Transmission System; (iii) acquire and maintain all Permits and other approvals from Governmental Authorities necessary to construct, operate, and maintain the Facility throughout the Term; and (iv) complete, update, and maintain all environmental impact and plant and wildlife impact studies and mitigation necessary to construct operate, and maintain the Facility, including all impact studies and mitigation required under the California Environmental Quality Act.

(b) Contract Capacity. As of the Effective Date, the Contract Capacity is expected be 71.88 MW-AC. Prior to the Commercial Operation Date, Seller may, without penalty or default, increase or decrease the Contract Capacity by plus or minus two percent (2%); provided that Seller shall promptly notify Buyer of any such adjustment.

(i) Guaranteed Contract Capacity Date. Seller may declare Commercial Operation in accordance with Section 2.6(a) once at least ninety-five percent (95%) of the Contract Capacity has been installed and commissioned. Seller shall have demonstrated Commercial Operation for one hundred percent (100%) of the Contract Capacity no later than April 1, 2022, which date shall be extended on a day-for-day basis commensurate with (i) any extension to the Guaranteed Commercial Operation Date as a result of a Permitted Extension or (ii) any Force Majeure Event occurring after the Guaranteed Commercial Operation Date (the "Guaranteed Contract Capacity Date"). Seller shall demonstrate Commercial Operation for one hundred percent (100%) of the Contract Capacity by satisfying the conditions in Section 2.6(a)(ii)-(vi) with respect to one hundred percent (100%) of the Contract Capacity. If Seller fails to demonstrate Commercial Operation for one hundred percent (100%) of the Contract Capacity on or prior to the Guaranteed Contract Capacity Date, then Seller shall pay to Buyer, as liquidated damages, [redacted] for each MW, or fraction thereof, of Contract Capacity that fails to reach Commercial Operation by the Guaranteed Contract Capacity Date (the "Contract Capacity Damages"), and thereafter the installed Capacity upon which such liquidated damages are calculated shall be the Contract Capacity.

(ii) Maximum Facility Capacity. Seller shall not install Capacity in excess of the Contract Capacity, as may be adjusted pursuant to this Section 2.5(b), without Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion.

(c) Milestone Schedule Reporting. Seller shall use commercially reasonable efforts to meet the Milestone Schedule and to avoid or minimize any delays in meeting such schedule. Within ten (10) Days after the end of each month after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer a monthly written report of its progress toward meeting the Milestone Schedule in a form substantially similar to **Attachment A** of **Exhibit I**. Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware that may impact Seller's ability to meet the Milestone Schedule.

(d) Guaranteed Construction Start Date. Seller shall initiate Facility Construction no later than December 1, 2020 (the "Guaranteed Construction Start Date"). If Seller has not initiated Facility Construction on or prior to the Guaranteed Construction Start Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day until such time as Facility Construction is initiated. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Seller initiates Facility Construction during a month for which Daily Delay Damages were paid in advance. In the event that Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall return to Seller any previously paid Daily Delay Damages resulting from Seller's failure to initiate Facility Construction on or prior to the Guaranteed Construction Start Date.

(e) Guaranteed Commercial Operation Date. Seller shall have demonstrated Commercial Operation no later than December 1, 2021 (the "Guaranteed Commercial Operation Date"). If Commercial Operation has not occurred on or prior to the Guaranteed Commercial Operation Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day until such time as Commercial Operation is achieved. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Commercial Operation is achieved during a month for which Daily Delay Damages were paid in advance.

(f) Permitted Extensions. If Seller complies with Section 2.5(f)(i), the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date, and the Guaranteed Contract Capacity Date, as applicable, may each be extended on a day-for-day basis for a time period no longer than one-hundred eighty (180) days as a result of: a Force Majeure Event; a delay caused by transmission provider (e.g., the CAISO), transmission owner, or Buyer through no fault of Seller; or a delay in obtaining final approval of a major use permit from San Diego County through no fault of Seller ("Permitted Extensions"); provided that such Permitted Extensions shall only be granted so long as Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to overcome the cause of such Permitted Extension.

(i) In order to secure a Permitted Extension, Seller shall provide Buyer written notice within ten (10) Days of Seller becoming aware of the facts or circumstances giving rise to the Permitted Extension. Such notice must clearly identify the reason for the Permitted Extension being claimed, including the extent and anticipated period of delay to the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date or the Guaranteed Contract Capacity Date, as applicable.

(g) Liquidated Damages. Each Party agrees and acknowledges that the damages Buyer would incur due to Seller's failure to initiate Facility Construction by the Guaranteed Construction

Start Date, Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or Seller's failure to achieve the Contract Capacity by the Guaranteed Contract Capacity Date would be difficult or impossible to determine, or obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore the Parties agree that Daily Delay Damages are an appropriate approximation of such damages. Buyer shall have the right to set off any Daily Delay Damages against payments due to Seller.

(h) Buyer's Termination Right. Buyer shall have the absolute and unconditional right, but not the obligation, to terminate this Agreement upon three (3) Days written notice to Seller if Seller fails to achieve Commercial Operation on or before the date that is one hundred and eighty (180) Days after the Guaranteed Commercial Operation Date, after giving effect to all Permitted Extensions. If Buyer exercises its termination right pursuant to this Section 2.5(h), Buyer's sole and exclusive remedy shall be Buyer's right to collect Daily Delay Damages up through the date upon which termination is effectuated pursuant to this Section 2.5(h).

**2.6 *Commercial Operation.***

(a) Commercial Operation Date. Seller shall make commercially reasonable efforts to achieve Commercial Operation by April 1, 2021; provided, that on or prior to the Commercial Operation Date, which shall be a date no sooner than April 1, 2021, Seller has completed all of the following conditions precedent set forth in this Section 2.6(a) to Buyer's reasonable satisfaction:

(i) Seller has provided to Buyer a certificate signed by an independent engineer in the form attached hereto as **Exhibit J** ("Commercial Operation Certificate"), certifying that subparts (ii), (iii), (iv), and (v) of this Section 2.6(a) have been completed;

(ii) All the facilities required by the Interconnection Agreements, including Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities, have been installed, tested and are completed as required by the Interconnection Agreements;

(iii) Seller has executed all necessary Transmission Provider and CAISO agreements, including all the Interconnection Agreements, and the CAISO has authorized deliveries from the Facility to the Delivery Point;

(iv) At least ninety-five percent (95%) of the Contract Capacity has been installed and commissioned in compliance with all applicable manufacturers' supply, construction, and operating specifications;

(v) All testing required by Prudent Operating Practices or any requirement of law to operate the Facility has been successfully completed;

(vi) Seller has successfully completed a one hundred sixty-eight (168) hour continuous operation test, under which Seller has demonstrated that the Facility is capable of delivering at least ninety-five percent (95%) of the Contract Capacity at the Delivery Point on a reliable and continuous basis as evidenced by such 168-hour continuous operation test, during which all Project components operate and are fully available during the 168-hour period;

(vii) All applicable Permits and all governmental approvals required to be obtained from any Governmental Authority to operate the Facility in compliance with Applicable Law and this Agreement have been obtained and are in full force and effect;

(viii) Seller has provided evidence to Buyer that Seller has obtained Site Control and has necessary rights to maintain Site Control during the Term;

(ix) Seller has satisfied the insurance coverage requirements of Section 6.2 of this Agreement and provided evidence of such coverage to Buyer; and

(x) Seller has delivered to Buyer the Operating Security.

(b) Seller shall provide notice of expected Commercial Operation to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation set forth in Section 2.6(a). Buyer shall have five (5) Business Days to approve or reject Seller's request for Commercial Operation. Upon Buyer's approval of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation. Upon Seller's receipt of Buyer's written acknowledgement, the Commercial Operation Date shall be the date of Seller's notice to Buyer with regard to completion of the conditions for achieving Commercial Operation set forth in Section 2.6(a), or the date upon which outstanding issues related to the satisfaction of the conditions in Section 2.6(a) have been resolved. If Buyer rejects Seller's request for Commercial Operation, Buyer shall provide Seller with a written explanation of the basis for such rejection within such initial 5-day period.

**2.7 *Title; Risk of Loss.***

Seller shall hold all rights, title and interest to all Product which Seller has conveyed and has committed to convey to Buyer hereunder. Title to and risk of loss with respect to any Energy purchased by and delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer at the Delivery Point, and such Energy shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any other Person at the time of Seller's delivery. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Product passes to Buyer, as between the Parties, Buyer shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused thereby. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive incentive or other tax benefits, or 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 Product, shall be effective regardless of whether the Seller is eligible for, or receives, incentive tax credits or any other tax benefits.

**2.8 *Transmission; CAISO Payments and Charges; Curtailment.***

(a) Seller's Transmission Service Obligations. Prior to the Commercial Operation

Date and at all times during the Delivery Term:

(i) Seller shall deliver all Energy to the Delivery Point, and Seller shall arrange and pay for any and all facilities and transmission services (and any regulatory approvals required for the foregoing) that are necessary for Seller to deliver Energy to Buyer at the Delivery Point, including all of Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities.

(ii) Seller shall bear all risks, fees, costs, and charges associated with or imposed on transmission of Energy to the Delivery Point, including, but not limited to, any Electrical Losses, outages or curtailment of Energy deliveries, CAISO costs, CAISO Penalties, congestion, scheduling deviation, energy imbalance, and neutrality allocations associated with or imposed on transmission of Energy to the Delivery Point.

(iii) Seller shall comply with all contractual, metering and applicable interconnection requirements, including those set forth in the Interconnection Agreements, Transmission Provider's applicable tariffs, the CAISO Tariff, and implementing CAISO standards and requirements, so as to be able to deliver Energy to the Delivery Point.

(b) CAISO Payments and Charges. Buyer shall be entitled to all CAISO payments, and shall be responsible for CAISO charges, except that Seller shall: (1) be responsible for (a) any administrative charges, penalties, or fees assessed by the CAISO to the Facility solely in its capacity as a generator in the CAISO market (including the Forecast Fee(s) and Grid Management Charge(s), both as defined in the CAISO Tariff), (b) any costs, charges and penalties assessed by the CAISO resulting from any five minute interval where the Uninstructed Imbalance Energy (as defined in the CAISO Tariff) quantity is negative; (2) be entitled to any CAISO revenues generated as a result of any five minute interval where the Uninstructed Imbalance Energy quantity is negative; (3) be responsible for any CAISO charges, penalties, or fees related to Seller's failure to comply with a Buyer Curtailment or Dispatch Down Instruction (as defined in the CAISO Tariff); and (4) be responsible for any CAISO charges due to Seller's failure to comply with the CAISO Tariff, except for those charges Buyer has agreed to pay in this Agreement.

(c) Curtailment. Seller shall fully or partially curtail deliveries of Energy to Buyer during, and to the extent required by, a Curtailment Period or a Buyer Curtailment Order.

(i) Curtailment Periods. During any Curtailment Period, Seller shall curtail the generation or delivery of Energy from the Facility as directed by CAISO, the Transmission Provider, or a Governmental Authority, or as such reductions or curtailments are communicated to Seller by Buyer at the direction of CAISO, the Transmission Provider, or a Governmental Authority. If Seller delivers Energy that is not compliant with a direction to curtail generation or delivery of Energy during a Curtailment Period, Buyer shall not be required to pay Seller the Contract Price for Seller's non-compliant Energy deliveries. To the extent an event arises that causes Seller to curtail Energy deliveries to Buyer at the Delivery Point, Seller shall use commercially reasonable efforts to minimize the extent, amount and duration of any such curtailments.

(ii) Buyer Curtailment Orders. Buyer shall have the right to order Seller to reduce generation or delivery of Energy from the Facility pursuant to a Buyer Curtailment Order; provided: (i) Buyer shall give Seller not less than thirty (30) minutes' notice prior to the requested curtailment; (ii) such Buyer Curtailment Order does not violate the manufacturer's operating limits of the Facility's equipment in which case Seller may refuse to implement such curtailment in such time frame without any liability to Buyer; provided, Seller must continue to curtail Energy in a manner that is consistent with such operating limits; and (iii) Buyer shall pay Seller for all Available Energy not delivered to Buyer due to a Buyer Curtailment Order in accordance with Section 2.2(a). Seller shall design and construct the Facility so that it has the ability to respond to a dispatch control signal in order to facilitate Buyer Curtailment Orders. If Seller delivers Energy that is not compliant with a Buyer Curtailment Order, Buyer shall not be required to pay Seller the Contract Price for Seller's non-compliant Energy deliveries. Seller shall, within one hundred and eighty (180) days of the expected Commercial Operation Date, provide Buyer with the operating limits for the Facility's equipment.

(iii) Notwithstanding the foregoing, if Seller fails to curtail deliveries of Energy during a Curtailment Period, or in accordance with a Buyer Curtailment Order, Seller shall assume all liability, be responsible for, and hold harmless Buyer, for any and all CAISO Penalties, other penalties, costs or charges incurred by Buyer due to Seller's failure to curtail, including payment for any negative CAISO Settlement Price associated with Energy deliveries that are not compliant with a Curtailment Order or Buyer Curtailment Order. In the event any such penalties, costs or charges are incurred by Buyer due to Seller's failure to curtail, Buyer shall provide Seller with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such amounts within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.16 hereof.

**2.9 *Scheduling; Forecasting; EIRP; Outage Notification.***

(a) Scheduling Coordinator. During the Term, Seller, at its sole cost, shall act as or select a Scheduling Coordinator for the Facility. In that regard, Buyer and Seller agree to the following:

(i) Designation as Scheduling Coordinator. Within thirty (30) Days of the Effective Date, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Seller, or Seller's SC, as Seller's Scheduling Coordinator so that such designation becomes effective as of the commencement of the Delivery Term. If Seller designates a Scheduling Coordinator, then Seller shall give Buyer notice of such designation at least ten (10) Business Days before Seller's SC assumes Scheduling Coordinator duties hereunder, and Buyer shall be entitled to rely on such designation until it is revoked or a new Sellers's SC is appointed by Seller upon similar notice. Seller shall be fully responsible for all acts and omissions of Seller's SC and shall indemnify Buyer for all CAISO Penalties, costs, charges and liabilities incurred by the Buyer.

(ii) Seller's Responsibilities as Scheduling Coordinator. As soon as it is authorized to act as the Facility's Scheduling Coordinator, Seller (or Seller's SC) shall comply with all obligations under the CAISO Tariff and shall conduct all scheduling and bid submissions in full compliance with the terms and conditions of this Agreement and the CAISO's protocol and scheduling practices, including the requirements of EIRP, if applicable (the "Scheduling Procedures"). Upon Buyer's request, Seller shall, within three (3) Business Days of such request, provide to Buyer any supporting documentation necessary for Buyer to audit and verify matters related to Seller's or Seller's SC's bids of the Facility into the CAISO market. Except as provided herein or to the extent attributable to Buyer's acts or omissions, including any failure by Buyer to meet any deadlines for making scheduling requests, Seller shall be responsible for the payment of all charges associated with its scheduling activities, including all charges assessed by the CAISO (including CAISO Penalties) with respect to Seller's scheduling of Energy.

(iii) Buyer shall have the right from time to time during the Term, at Buyer's sole cost and expense, to enter into contracts with solar forecast service providers for the provision of forecasts respecting the Facility. In such event, Buyer shall provide Seller reasonable advance written notice thereof with the date of commencement of such service; provided, if requested by Seller, such solar forecaster selected by Buyer shall execute a confidentiality agreement in form and substance reasonably satisfactory to Seller.

(b) Forecast Procedures. Seller shall, at its sole cost, and at all times during the Term:

(i) Provide Buyer with information in a manner and time frame that allows Buyer to comply with the CAISO's forecasting and associated data collection requirements as set forth in the CAISO Tariff (including, as applicable, Appendix Q thereof);

(ii) Provide to Buyer:

(A) Annual Forecast of Energy Production. By December 1 of each calendar year during the Term, Seller shall provide to Buyer a non-binding forecast of the hourly Energy production for an average day in each month of the follow calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Energy Production. Ten (10) Business 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 Energy production for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Energy Production. During the Delivery Term, Seller shall provide to Buyer a day-ahead forecast of hourly Energy production for each day no later than as required by WECC, which at a minimum shall be no more than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Seller shall notify Buyer of any changes in hourly Energy production of one (1) MWh or more, whether due to Forced Outage, Force Majeure Event, or other cause within thirty (30) minutes after obtaining knowledge of such event. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in hourly Energy production, the expected end date and time of such event, and the expected Available Capacity in MW during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage.

(iii) If any Governmental Authority imposes forecasting requirements associated with the Product, Seller shall comply, and provide Buyer with information in a manner and time frame that allows Buyer to comply with such forecasting requirements ((i), (ii) above and this subsection (iii), the "Forecast Procedures").

(c) Each Party shall perform its respective scheduling and forecasting obligations in compliance with all applicable: (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Prudent Operating Practices. Seller shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Buyer due to Seller's failure to comply with the Forecasting Procedures or Scheduling Procedures or Seller's failure to comply with its obligations set forth in Section 2.9(d). Buyer shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Seller due to Buyer's failure to comply with the Scheduling Procedures. Any invoice submitted by either Buyer or Seller related to CAISO Penalties shall include the related CAISO invoice and a written statement explaining in reasonable detail the calculation of the amount due. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.16.

(d) Outage Notification.

(i) Seller shall comply with the CAISO Tariff regarding notifying CAISO with respect to, and securing any necessary CAISO approvals for, all Facility outages, including Forced Outages and Planned Outages, and Seller shall comply with the CAISO Tariff regarding all CAISO reporting requirements with regard to outages through use of the CAISO OMS (as defined in the CAISO Tariff) electronic-outage reporting system (or a successor reporting system). Seller shall conform the timing and extent of all Planned Outages with the outage schedule provided to CAISO. Seller shall be responsible for securing CAISO approval for changes in its outage schedules if CAISO disapproves Seller's proposed schedules or if there is any cancellation of previously approved outages. Seller shall promptly notify Buyer of all Forced Outages and Planned Outages and provide Buyer with a copy of any communications with CAISO with respect to such outages.

(ii) No later than (A) thirty (30) days prior to the anticipated Commercial Operation Date, and (B) at least at least sixty (60) days before July 1 of each calendar year throughout the Term, Seller shall submit to Buyer, Seller's schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four (24) month period, and Seller shall provide the following information for each proposed Planned Outage:

(1) Start date and time;
(2) End date and time;
(3) Available Capacity of the Facility during the Planned Outage; and
(4) Purpose for the Planned Outage.

(iii) Seller shall not schedule Planned Outages during the months of June to September, unless (1) such Planned Outage is required to avoid damage to the Facility, (2) such Planned Outage is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (3) such Planned Outage is required in accordance with Prudent Operating Practices, or (4) the Parties agree otherwise in writing.

(iv) Within thirty (30) days after Buyer's receipt of a proposed Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, use commercially reasonable efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. If a condition occurs at the Facility that causes Seller to revise its Planned Outages, Seller shall provide prompt notice to Buyer, which notice shall be provided within three (3) Business Days of Seller's becoming aware of such condition or revision (including an estimate of the length of such Planned Outage).

**2.10 *Capacity Rights.***

(a) Buyer shall be entitled to all Capacity Rights associated with the Facility during the Term. The consideration for all such Capacity Rights is included within the Contract Price. During the Term, Seller shall not sell or attempt to sell to any other Person the Capacity Rights, and Seller shall not report to any person or entity that the Capacity Rights belong to anyone other than Buyer.

(b) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights to Buyer; and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including: (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes; (B) assisting Buyer in making such annual submissions to the CAISO associated with establishing the correct quantity of Capacity Rights; (C) coordinating with Buyer in accordance with Section 5.5(b) on the submission to the CAISO of the monthly Supply Plan submissions (or corrections), as required by the CAISO Tariff; and (D) providing the CAISO all necessary information for annual and other outage planning.

(c) Seller shall deliver such additional documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Rights and Resource Adequacy; provided, that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(d) At all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Capacity Rights may be provided from the Facility without regard to Section 3.3. Subject to Section 3.3, at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that ancillary services may be provided from the Facility.

**2.11 *Sales for Resale.***

All Energy delivered to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

## ARTICLE 3
## TERM; TERMINATION; DEFAULTS

### 3.1 *Term.*

The "Term" of this Agreement shall commence on the Effective Date and continue until 23:59 pm PPT on the date that is twenty (20) years after the first day of the Delivery Term, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

### 3.2 *Regulatory Approvals; Certifications; Qualifications.*

(a) Except as specifically provided for herein, each Party shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

(b) Seller shall file an application for CEC pre-Certification and Verification for the Facility within thirty (30) days following the Effective Date. Seller shall, at its sole expense (but subject to Section 3.3), take all steps necessary to ensure that during the Delivery Term: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource, and in that regard, Seller shall submit an application to the CEC for final CEC Certification and Verification within ten (10) Business Days after the Commercial Operation Date; (ii) the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with Portfolio Content Category 1 and meet the criteria of California Public Utilities Code Section 399.16(b)(1), and as such, Seller shall ensure that in all cases the Renewable Energy Credits and Energy from the Facility are bundled according to the applicable CEC RPS Eligibility Guidebook; and (iii) the Facility is maintained and operated in a manner so as to preserve such certification and qualification.

(c) Seller shall, at its sole expense (but subject to Section 3.3), make any filings and submit any reports necessary for the Facility to maintain and comply with CEC, ERR and California Renewables Portfolio Standard certifications and qualifications during the Delivery Term and shall promptly provide Buyer with copies of any such filings or reports. Buyer shall cooperate with Seller by providing promptly to Seller such data and information necessary, if any, in order for Seller to prepare and submit such filings and reports. In the event Seller fails to make such filings or submit such reports necessary to maintain such CEC, ERR and California Renewables Portfolio Standard certifications and qualifications (and such failure is not caused by Buyer's actions or inactions), Buyer, on prior notice to Seller and at Seller's expense (but subject to Section 3.3), may take any and all actions deemed necessary by Buyer, on behalf of Seller and as Seller's agent, to maintain such CEC, ERR and California Renewables Portfolio Standard certifications and qualifications, including executing all necessary California regulatory agency documentation in order to accomplish the foregoing.

(d) To the extent the Facility is eligible to participate in the EIRP prior to the Commercial Operation Date, Seller shall, at its sole cost, promptly undertake such commercially reasonable actions as may be necessary to ensure the Facility participates in EIRP at the earliest date possible, but shall not be obligated to participate earlier than the Commercial Operation Date. Seller shall provide Buyer immediate oral notice of its receipt from CAISO of any notice or certification from CAISO regarding the Facility's participation in EIRP and shall provide Buyer with a written copy of the notice from CAISO certifying the Facility as eligible to participate in the EIRP within three (3) Business Days of Seller's receipt of such notice of EIRP certification. At all times following EIRP certification, Seller shall, at its sole cost (but subject to Section 3.3), participate in and comply with EIRP as directed by Buyer and shall comply with all additional protocols issued by the CAISO relating to EIRP resources during all hours of the Delivery Term. Seller as Scheduling Coordinator (or Seller's SC) shall facilitate communication between Seller and CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and any additional protocols. Seller shall, at its own expense, comply with, and satisfy the certification requirements of EIRP.

(e) Throughout the Term, Seller shall, at its sole cost (but subject to Section 3.3), to the extent required by NERC, WECC or FERC, cause the Facility Operator to register with NERC as the Generator Operator of the Facility and in which case Seller shall: (i) cause the Facility Operator to be responsible for complying with all NERC Reliability Standards applicable to a Generator Operator; and, (ii) be liable for all penalties assessed by NERC, FERC or WECC for violations of the NERC Reliability Standards applicable to a Generator Operator.

(f) Notwithstanding any provision of this Agreement, Seller acknowledges that Buyer has no obligation to register with NERC as a Generator Operator or any other applicable NERC registration category with respect to the Facility, as a result of this Agreement, or to comply with any NERC Reliability Standards or requirements thereunder applicable to the Facility.

**3.3** ***Compliance Expenditure Cap.***

(a) If Seller establishes to Buyer's reasonable satisfaction that a change in Applicable Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under Sections 2.10(d), 3.2(b)-(e), or 7.3 of this Agreement (such Seller-incurred costs, the "Compliance Expenditures"), then the Parties agree that the maximum aggregate amount of Compliance Expenditures Seller shall be required to bear during the Delivery Term shall be capped at [redacted] per Contract Year and [redacted] in the aggregate over the Term ("Compliance Expenditure Cap"). Any actions required for Seller to comply with its obligations set forth in this Section 3.3(a), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

(b) Seller shall use commercially reasonable efforts to provide Buyer with five (5) Days written notice of any Compliance Expenditures incurred by Seller that Seller reasonably believes should be counted against the Compliance Expenditure Cap, but failure of Seller to provide Buyer with notice within such time will not impact whether such Compliance Expenditure is permitted to be counted against the Compliance Expenditure Cap. If Seller reasonably anticipates the need to incur Compliance Expenditures in excess of the Compliance Expenditure Cap, Seller shall notify Buyer of such Compliance Expenditures. Buyer shall have sixty (60) Days from the receipt of such Notice to evaluate such Notice (during which time period Seller is not obligated to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap) and shall, within such time, either (1) agree to reimburse Seller for the Compliance Expenditure amount that exceeds the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Expenditures"), or (2) waive Seller's obligation to take the identified Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.3(b) within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term. If Buyer agrees to reimburse Seller for the Accepted Compliance Expenditures, 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 Compliance Expenditures that exceed the Compliance Expenditure Cap within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

**3.4 *Defaults; Remedies; Termination Payment.***

(a) Default. Each of the following shall constitute an "Event of Default" hereunder:

(i) A Party has made a representation or warranty herein that is false or incorrect in a material respect that has a material adverse effect on the other Party (the non-defaulting Party), and the non-defaulting Party provides to other Party notice of the same, and: (A) such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after notice is received by the defaulting Party; or (B) if such inaccuracy is not capable of being remedied, but the non-defaulting Party's damages resulting from such inaccuracy can be reasonably ascertained, then if payment of such damages is not made within ten (10) Business Days after a notice of such damages is provided by the non-defaulting Party to the defaulting Party;

(ii) A Party fails to pay any amount due hereunder, where such failure is not cured within ten (10) Days after written notice from the other Party of such failure to pay;

(iii) A Party has (a) filed or otherwise commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) failed, or admitted in writing its inability generally, to pay its debts as such debts become due, (c) made a general assignment for the benefit of creditors, which excludes collateral assignment to Lenders pursuant to Section 8.2(b)(i), (d) been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (e) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (f) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive Days, (g) failed to remove or stay an involuntary petition in bankruptcy filed against it within sixty (60) Days of the filing thereof, or (h) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301;

(iv) Seller fails to maintain Site Control, if such default has not been cured by Seller within thirty (30) Days after receiving written notice from Buyer;

(v) Seller fails to post or maintain Development Security or Operating Security in compliance with Section 3.6 and such default is not cured within ten (10) Business Days after notice from Buyer;

(vi) Seller fails to obtain CEC Certification and Verification within ninety (90) Days of the Commercial Operation Date or Seller fails to maintain such status thereafter through the end of the Term, or the Facility fails to qualify as an ERR and any Energy from the Facility sold to Buyer fails to qualify as eligible renewable energy for purposes of the California Renewables Portfolio Standard, and such failure is not cured within ten (10) Business Days after notice;

(vii) Except as otherwise provided herein, during the Term, Seller assigns, transfers, conveys, encumbers, sells, or otherwise disposes of all or any portion of the Product that is to be sold and delivered to Buyer under this Agreement to any person other than Buyer, or Seller delivers, or attempts to schedule or deliver, energy to the Delivery Point to satisfy its obligations under this Agreement that was not generated by or attributable to the Facility;

(viii) Except as otherwise provided herein, Seller installs Capacity in excess of the Contract Capacity at the Facility and such excess generating capacity is not removed within thirty (30) Days after notice from Buyer;

(ix) Seller fails to deliver Energy together with Excused Energy during a Performance Period in a quantity greater than seventy percent (70%) of the sum of the Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period;

(x) Seller has not sold or delivered Energy from the Facility to Buyer for a period of twelve (12) consecutive months after the Commercial Operation Date, except due to during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement or the Interconnection Agreements, or (D) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii); or

(xi) Any other default in performance or observance by a Party of any agreement, undertaking, covenant or other obligation contained in this Agreement that has a material adverse effect on the other Party if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default and its impact on the non-defaulting Party; provided, however, that, in the case of any such default that is not reasonably capable of being cured within the thirty (30) Day cure period, the defaulting Party shall have up to an additional sixty (60) Days if it commences to cure the default within such initial thirty (30) Day cure period and it diligently and continuously pursues such cure.

(b) Remedies. Upon the occurrence of, and during the continuation of, an Event of Default by a Party, the non-defaulting Party shall have the right but not the obligation to:

(i) Subject to Section 8.8, pursue all remedies given under this Agreement or now or hereafter existing at law, in equity or otherwise;

(ii) Suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) Terminate this Agreement by notice to the other Party, designating a Day no less than thirty (30) Days after such notice, as an early termination date (the "Early Termination Date") to accelerate all amounts then owing between the Parties and to liquidate and terminate this Agreement.

(c) Termination Payment.

(i) During the Term, as soon as practicable after the declaration of an Early Termination Date, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment. The non-defaulting Party shall calculate the Termination Payment in a commercially reasonable manner as of the Early Termination Date. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment, if any, shall be made by the Party owing the Termination Payment within five (5) Business Days after such notice is effective and shall bear interest at the Prime Rate from the due date until paid.

(ii) "Termination Payment" means an amount equal to the sum of all Losses (if any) and all Costs (if any) incurred by the non-defaulting Party as a result of the termination of this Agreement, plus all amounts then currently due from the defaulting Party to the non-defaulting Party under this Agreement, minus all amounts due to the defaulting Party under this Agreement, so that all such amounts shall be netted to a single liquidated amount payable by the defaulting Party to the non-defaulting Party.

(iii) If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting party shall, within ten (10) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be resolved in accordance with Section 8.16. Notwithstanding any provision of this Agreement, Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

**3.5 *Specific Performance; Injunctive Relief.***

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

**3.6 *Seller's Financial Support Obligations.***

(a) Development Security. Seller shall provide to Buyer as security for the performance of Seller's obligations hereunder, either (a) a Letter of Credit from a Qualified Institution reasonably acceptable to Buyer, or (b) a cash deposit; in either case in an amount equal to [redacted] (the "Development Security"). Seller shall post the Development Security by the later to occur of April 14, 2020 or five (5) Business Days after Buyer executes the Agreement. Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion, in the event Seller fails to make any payments due and owing under this Agreement or to reimbursement Buyer for costs or damages, including Daily Delay Damages, that Buyer has incurred as a result of Seller's failure to perform its obligations under this Agreement, if Seller has not cured such non-payment within ten (10) Days after receipt of written notice from Buyer of the non-payment. Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the full amount; provided that the aggregate amount of all replenishments of the Development Security under this provision shall be capped at 100% of the amount of the Development Security (i.e. one full replenishment). Buyer shall release the Development Security, less amounts drawn, if any, to Seller upon the earlier of (i) the termination of this Agreement in accordance with its terms; or (ii) the tenth (10th) Business Day after Seller posts the Operating Security pursuant to Section 3.6(b). Upon the consent of Buyer, with respect to cash held as Development Security, Seller may elect to apply and maintain the unused portion of the Development Security, if any, as a portion of Operating Security pursuant to Section 3.6(b).

(b) Operating Security. As a condition of Buyer's continuing obligation under this Agreement, Seller shall provide to Buyer as security for the performance of Seller's obligations during the Delivery Term, either (a) a Letter of Credit from a Qualified Institution reasonably acceptable to Buyer, or (b) a cash deposit; in either case, in an amount equal to [redacted] (the "Operating Security"). Seller shall post the Operating Security on or prior to the Commercial Operation Date and maintain the Operating Security until the end of the Term. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion, in the event Seller fails to make any payments owing under this Agreement or to reimburse Buyer for costs or damages that Buyer has incurred as a result of Seller's failure to perform under this Agreement, if Seller has not cured such non-payment within ten (10) Days after receipt of written notice from Buyer of the non-payment. Within five (5) Business Days following any draw by Buyer on the Operating Security, Seller shall replenish the amount drawn such that the Operating Security is restored to the full amount; provided that the aggregate amount of all replenishments of the Operating Security under this provision shall be capped at 100% of the amount of the Operating Security (i.e. one full replenishment). Buyer shall release the Operating Security, less amounts drawn, if any, to Seller upon the earlier of (i) termination of this Agreement in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

(c) With respect to any Letter of Credit posted hereunder, on or before the date that is thirty (30) days prior to the expiration date of any Letter of Credit, Seller shall cause the Letter of Credit to be renewed or replaced with another Letter of Credit in an equal amount. Buyer shall have the right to draw on a Letter of Credit, at Buyer's sole discretion if (A) such Letter of Credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (B) the issuer is no longer a Qualified Institution and Seller has not caused a replacement Letter of

Credit to be issued for the benefit of Buyer within ten (10) Business Days of such issuer no longer qualifying as a Qualified Institution; provided that if Buyer draws upon any Letter of Credit for the foregoing reasons and Seller subsequently posts a replacement Letter of Credit or extends or renews a Letter of Credit (in the case of (A) above), the proceeds of Buyer's drawing shall be returned to Seller.

## ARTICLE 4
## BILLING AND PAYMENT; METERING AND MEASUREMENT

**4.1** ***Billing; Payment.***

(a) Billing and payment for Product sold to and purchased by Buyer under this Agreement and any other amounts due and payable hereunder, including Buyer's payments for Available Energy, if any, shall be as follows:

(i) Commencing on the Effective Date and continuing throughout the Term, Seller shall, consistent with Section 4.2, calculate: (A) the amount of Energy delivered to Buyer at the Delivery Point from recordings produced by the Meter(s) for the Facility on or near the last Day of each calendar month through last Day of the final Contract Year; and (B) the amount of Available Energy, if any, for each calendar month through the last Day of the final Contract Year.

(ii) No later than the tenth ($10^{th}$) Day of each calendar month during the Term and for the first calendar month following the expiration thereof, Seller shall deliver to Buyer an invoice showing (A) the amount of Energy delivered to Buyer by Seller at the Delivery Point (which deliveries shall be adjusted to reflect Electrical Losses to the Delivery Point in accordance with Section 4.2(a)) during the preceding calendar month of the Term, and Seller's computation of the amount due Seller in respect thereof; (B) the amount, if any, of Available Energy during the preceding calendar month of the Delivery Term, and Seller's computation of the amount due Seller in respect thereof; and (C) any other amounts owed by one Party to the other Party pursuant to this Agreement; provided, however, that prior to the beginning of the Delivery Term, Seller's invoices shall include the CAISO Settlement Price for delivered Energy and Seller's invoices shall not include Available Energy amounts. Seller shall cooperate reasonably with any Buyer request to modify the format, or level of detail, of Seller invoices pursuant to this Agreement.

(iii) Prior to the Delivery Term, Buyer shall pay to Seller the undisputed amount of each invoice by the later of either the twentieth ($20^{th}$) calendar day of the month or ten (10) Days after receipt of the CAISO Settlement Price (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day). Buyer may adjust future payments to Seller to account for any recalculation of the CAISO Settlement Price for previously paid Energy deliveries. To the extent Seller owes Buyer any amounts hereunder, including damages payable to Buyer pursuant to Section 5.5, Buyer may set-off such amounts from Buyer's payments to Seller. Buyer shall make payment by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time.

(iv) During the Delivery Term, Buyer shall pay to Seller the undisputed amount of each invoice by the later of either the twentieth ($20^{th}$) calendar day of the month or ten (10)

Days after receipt of each invoice (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day). To the extent Seller owes Buyer any amounts hereunder, including damages payable to Buyer pursuant to Section 5.5, Buyer may set-off such amounts from Buyer's payments to Seller. Buyer shall make payment by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time.

(b) Except as provided in Section 4.1(e), within one (1) year after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein, and the Parties shall meet, by telephone conference call or otherwise, within ten (10) Business Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek any remedy that may be available to such Party at law or in equity.

(c) Except as otherwise provided in this Agreement, all payments hereunder shall be made without set-off or deduction. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a dispute settled in favor of Buyer, a refund is owed to Buyer, then the amount of the overpayment shall bear interest from the date on which such payment was made by Buyer through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Buyer by mail, facsimile, or E-mail to:

Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616
Attn: Director, Finance and Operations
Telephone: 530-446-2752
E-mail: Alisa.Lembke@valleycleanenergy.org

Statements or invoices shall be sent to Seller by mail or facsimile to:

Rugged Solar LLC
c/o Clean Focus Renewables, Inc.
150 Mathilda Pl # 106
Sunnyvale, CA 94086
Attn: Accounting
Telephone: (408) 329-9280
Facsimile:
E-mail: accounting@cleanfocus.net

Either Party may change the address or facsimile number by providing written notice to the other Party.

(e) If Seller or Buyer determines that a calculation of delivered Product or CAISO Penalties is incorrect as a result of inaccurate Meters, the correction of data by the CAISO in MRI-S, or a recalculation of CAISO Penalties or other amounts owing between the Parties, Seller or Buyer, as the case may be, shall promptly recompute the delivered Product, CAISO Penalties, or other amounts for the period of the inaccuracy based upon an adjustment of inaccurate Meter readings, correction of data or recalculation of CAISO Penalties in accordance with the CAISO Tariff and any payment affected by the adjustment or correction. Any amount due from Buyer to Seller, or Seller to Buyer, as the case may be, will be made as an adjustment to the next monthly payment statement that is calculated after Seller's or Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after applying any amounts owing to Seller as shown on the next monthly payment statement, any such amount owing to Buyer shall, at Buyer's discretion, be netted against amounts owed to Seller in any subsequent monthly payment invoice or be separately invoiced to Seller, in which case Seller must pay the amount owing to Buyer within twenty (20) days after receipt of that invoice. Buyer or Seller may make payment adjustments arising from a recalculation of CAISO Penalties or as a result of inaccurate Meters after the end of a Contract Year. Adjustment payments for Meter inaccuracy will not bear interest.

**4.2** ***Metering Equipment.***

(a) During the Delivery Term, Seller shall: (i) provide and maintain, at its cost, all metering and recording equipment necessary to meet all applicable WREGIS, CEC and CPUC requirements to permit an accurate determination of the quantities of Green Attributes generated by the Facility; (ii) provide and maintain, at its cost, Meter(s) and associated measuring and recording equipment necessary to meet all applicable CAISO requirements to permit an accurate determination of the quantities of Energy delivered to the Delivery Point under this Agreement; (iii) measure all deliveries of Energy through Seller's CAISO revenue Meter(s) assigned to the Facility located closest to the Delivery Point; (iv) ensure that Meter(s), and any Back Up Meter(s), shall be adjusted to reflect Seller's deliveries of Energy at the Delivery Point using a formula reasonably acceptable to Buyer to account for Electrical Losses associated with transmission of Energy to the Delivery Point; and, (v) exercise reasonable care in the maintenance and operation of any such Meter(s) and Back Up Meter(s) so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of Energy delivered to Buyer at the Delivery Point under this Agreement. A metering diagram is attached as **Exhibit C**.

(b) During the Term, all Energy from the Facility must be delivered through Meter(s) and Back-Up Meter(s), as applicable, and must be measured by the Meter(s) or Back-Up Meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to Meter(s) installed to measure the delivery of Energy, except for Back-Up Meter(s) installed at the direction of Buyer, which costs to purchase, install and maintain such Back-Up Meter(s) installed at the direction of Buyer shall be borne by Buyer. Seller hereby agrees to obtain and provide all Meter data, including all inspection, testing and calibration data and reports, to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all related inspection, testing and calibration data and reports. Seller shall grant Buyer the right to access and retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) application and/or directly from the Meter(s) at the Site; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. If the CAISO adjusts any CAISO Meter data related to a specific time period, Seller agrees that it shall, pursuant to Section 4.1(e), submit revised monthly invoices related to such time period in order to reconcile past invoices to conform fully with such CAISO Meter data adjustments. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which it receives from the CAISO such binding adjustment to the Meter data.

(c) Seller shall test and calibrate the Meter(s), as necessary, but in no event shall the period between testing and calibration dates be greater than twelve (12) months. Seller shall bear the cost for any Meter check or recertification of the Meter(s); provided, Buyer shall reimburse Seller the costs associated with recertification of a Back-up Meter installed at the direction of Buyer. Seller shall replace Meter and Back-Up Meter batteries at least once every thirty-six (36) months, or such shorter period as may be recommended by the Meter or Back-Up Meter manufacturer. Notwithstanding the foregoing, if a Meter or Back-Up Meter battery fails, Seller shall replace such battery within one (1) day after becoming aware of its failure. Seller shall use certified test and calibration technicians to perform any work associated with Meter(s) and Back-Up Meter(s), and Seller shall provide Buyer certified results of tests and calibrations within thirty (30) days after completion.

(d) Buyer is permitted, but not obligated, to request, at Buyer's sole cost and expense, that Seller furnish and install one or more Back-Up Meters at locations of Buyer's choosing. All such Back-Up Meters shall be CAISO approved and the readings from each such Back-Up Meter shall be adjusted to reflect Seller's Energy deliveries to Buyer at the Delivery Point, taking into account Electrical Losses.

(e) All of the Meters and Back-Up Meters shall be locked or sealed, and the lock or seal shall be broken only for purposes of testing, calibration, or adjustment. If any Meter or Back-Up Meter is found to be defective or inaccurate, it shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Seller at the expense of the Party owning such defective or inaccurate device. Each Party grants the other Party the right to request additional tests of such Party's Meter(s) or Back-Up Meter(s), as applicable, with reasonable prior notice and at reasonable time in order verify the accuracy of such Meter(s) or Back-Up Meter(s) and the Party owning such Meter or Back-Up Meter shall perform such additional tests; provided, such inspections and verifications shall be at the requesting Party's sole expense and shall not occur more than two (2) times each Contract Year for each Meter or Back-Up Meter during the Term; provided that if a test of a Meter or Back-Up Meter determines that the Meter or Back-Up Meter is inaccurate by more than one half percent (0.5%), the Party owning the Meter or Back-Up Meter shall pay for such test and such test shall not count towards the two test per Contract Year for each Meter or Back-Up Meter limit described above.

(f) If a Meter or Back-Up Meter fails to register, or if the measurement made by a Meter or Back-Up Meter is found upon testing to be inaccurate by more than one half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Meter or Back-Up Meter for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) In the event that a Meter is found to be defective or inaccurate, the Parties shall use readings from a Back-Up Meter, if installed, to determine the amount of such inaccuracy;

provided, however, that such Back-Up Meter has been tested and maintained in accordance with the provisions of this Agreement. If there is no Back-Up Meter, or such Back-Up Meter is also found to be inaccurate by more than one half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Energy from the Facility to the Delivery Point during periods of similar operating conditions when the Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(ii) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shortest of (A) the last one-half of the period from the last previous test of the Meter to the test that found the Meter to be defective or inaccurate, (B) the last one-half of the period from the last previous test of the Back-Up Meter to the test that found the Back-Up Meter to be defective or inaccurate, or (C) the one hundred eighty (180) days.

(g) Notwithstanding any provisions set forth in this Section 4.2, to the extent there is an inconsistency between this Agreement and the provisions of the CAISO Tariff or Metering Services Agreement, the CAISO Tariff or Metering Services Agreement shall control.

**4.3 *Maintenance; Records.***

During the Term, Seller shall provide Buyer reports indicating the amount of Energy delivered to Buyer at the Delivery Point from recordings produced by the Meter(s) for the Facility. Seller shall provide reports on a frequency, and in a format, as reasonably requested by Buyer. Buyer shall have the right to be present whenever Seller reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Meter(s), Back-Up Meter(s), or any of Seller's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Delivery Point during the Term; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. Seller shall give at least two (2) Business Days' notice to Buyer in advance of taking any such actions. The records from the measuring equipment shall remain the property of Seller, but, upon request, Seller shall submit to Buyer its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Seller agrees to retain such records for a period no less than two (2) years.

**4.4 *Electronic Communications.***

During the Delivery Term, Seller shall provide Buyer, at Seller's sole expense, the instantaneous net MW flow updated every minute via file transfer protocol which represents the quasi real time electronic Meter data from the Facility. During the Delivery Term, Seller shall use commercially reasonable efforts to transmit to Buyer, on a real time basis, any other operational data from the Facility that Seller receives or possesses. During the Delivery Term, Seller, at its own expense, shall: (a) install and maintain at least one (1) stand-alone meteorological station (the "Meteorological Station") at the Site to monitor and report meteorological data; (b) install and maintain additional Meteorological Stations at the Facility, if any, required pursuant to the CAISO Tariff; (c) provide meteorological data to Buyer on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals); and (d) install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree for the communication of such meteorological data to Buyer.

**4.5** ***Environmental Contamination.***

Seller shall disclose in writing to Buyer, the extent of, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Site, alleged to exist by any Person or Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

## ARTICLE 5
## REPRESENTATIONS, WARRANTIES AND COVENANTS

**5.1** ***Seller's Representations and Warranties.***

(a) Seller represents and warrants as follows:

(i) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of California, and authorized to conduct business in the State of California;

(ii) 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;

(iii) Seller has taken all action required by Applicable Law and its documents of formation in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the 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 provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller, or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, or receiverships pending or being contemplated by Seller, or to its knowledge threatened against Seller;

(vii) There are no actions or proceedings pending or, to Seller's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other Governmental Authority, that would materially adversely affect Seller's ability to perform its obligations under this Agreement;

(viii) 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 creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity; and

(ix) Seller has procured or will procure prior to the commencement of the Delivery Term all easements or leases of real property required for the operation of the Facility at the Site and the performance of any obligations of Seller hereunder, and the terms of each are for periods of no less than the Term.

**5.2** ***Buyer's Representations and Warranties.***

(a) Buyer represents and warrants as follows:

(i) Buyer is a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq*.) and as such is duly organized, validly existing and in good standing under the laws of the State of California and authorized to conduct business in California;

(ii) 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;

(iii) Buyer has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the 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 or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Buyer or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Buyer has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Buyer, or to its knowledge threatened against Buyer;

(vii) There are no actions or proceedings pending or, to Buyer's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other governmental body that would materially adversely affect Buyer's ability to perform its obligations under this Agreement; and

(viii) 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 creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

**5.3 *Seller's Covenants.***

(a) Seller covenants that:

(i) At all times during the Term, the Facility shall be operated and maintained in accordance with this Agreement, Prudent Operating Practices, and Applicable Laws;

(ii) From the Effective Date through the expiration or termination of this Agreement, Seller shall comply with this Agreement and applicable provisions of the CAISO Tariff;

(iii) Except for assignments authorized in accordance with Section 8.2, Seller shall at all times own and operate the Facility;

(iv) Seller shall obtain, maintain, and remain in compliance with all Permits, Interconnection Agreements, and transmission and distribution rights necessary to operate the Facility and to deliver Product to Buyer, including Energy from the Facility to the Delivery Point;

(v) Seller shall maintain Site Control required for the operation of the Facility at the Site and the performance of any obligations of Seller hereunder;

(vi) Seller shall cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable California statutes and regulations affecting job safety; and

(vii) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.

**5.4 *Buyer's Covenants.***

(a) <u>Buyer's Reporting of Financial and Credit Information</u>. Beginning on the first full calendar quarter of the Term and continuing until the expiration of the Term, Buyer shall provide to Seller the following reports and information:

(i) within sixty (60) days after the end of each fiscal quarter: (1) the number of customers of Buyer by customer category (including retail, commercial and industrial) as of the end of such fiscal quarter, (2) Buyer's Historical Load Served for the prior quarter and (3) unaudited quarterly financial statements of Buyer;

(ii) within one hundred twenty (120) days after the end of each fiscal year, annual audited financial statements of Buyer (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and

(iii) concurrently with the delivery by Buyer of Buyer's quarterly financial statements for each fiscal quarter that ends on a Coverage Ratio Test Date, Buyer shall provide to Seller Buyer's calculation (with a reasonable level of detail and explanation) of the Coverage Ratio as of such Coverage Ratio Test Date.

(b) Buyer Financial Covenants.

(i) Subject to Section 5.4(b)(ii) below, if at any time after the Effective Date, the Coverage Ratio as of any Coverage Ratio Test Date is less than the Minimum Coverage Ratio, Seller may demand in writing that Buyer deliver to Seller, and Buyer agrees that it shall deliver to Seller within thirty (30) days after such written demand from Seller, Buyer Performance Assurance. Buyer shall maintain such Buyer Performance Assurance until such time that the Coverage Ratio is equal to or greater than the Minimum Coverage Ratio as of a Coverage Ratio Test Date. If, at any time after Buyer has delivered Buyer Performance Assurance to Seller as required by this subsection (b), (x) the Coverage Ratio is equal to or greater than the Minimum Coverage Ratio as of a Coverage Ratio Test Date and (y) no Event of Default with respect to which Buyer is the Defaulting Party has occurred and is continuing, Seller shall reasonably promptly release to Buyer such Buyer Performance Assurance; provided, however, that if the Coverage Ratio as of any subsequent Covenant Ratio Test Date is less than the Minimum Coverage Ratio, Seller may again demand that Buyer deliver to Seller, and Buyer must again deliver to Seller, Buyer Performance Assurance in accordance with the requirements of this subsection (b).

(ii) During any period of time that a Suspension Event has occurred and is continuing, then, beginning on the Coverage Ratio Test Date, Buyer shall not be required to comply with the covenant in clause (i) above (the "Coverage Ratio Covenant"). If Buyer is not required to comply with the Coverage Ratio Covenant for any period of time as a result of the preceding sentence and, subsequently, (x) Moody's or S&P withdraws its Credit Rating for Buyer or downgrades the Credit Rating of Buyer so that Buyer does not have an Investment Grade Credit Rating or (y) an Event of Default with respect to which Buyer is the Defaulting Party occurs and is continuing, the Suspension Event shall cease to be in effect and Buyer shall thereafter be required to comply with the Coverage Ratio Covenant from and after the first Coverage Ratio Test Date immediately following the date on which the Suspension Event ceases to be in effect.

(iii) If the Buyer Performance Assurance is a Buyer Letter of Credit and (i) the issuer of such Buyer Letter of Credit fails to maintain its Credit Rating, (ii) Buyer fails to renew such Buyer Letter of Credit at least thirty (30) days prior to its expiration date or (iii) the issuer fails to honor Seller's properly documented request to draw on such Buyer Letter of Credit by such issuer, Buyer shall have five (5) Business Days to either post Buyer Cash Collateral or deliver a substitute Buyer Letter of Credit that meets the requirements herein. Seller shall have the full right to draw upon the Buyer Performance Assurance in whole or part at any time and from time to time following the occurrence of a Buyer Event of Default, if Buyer has not cured such Buyer Event of Default within ten (10) Days after receipt of written notice of a Buyer Event of Default from Seller. Within ten (10) days following any such draw, Buyer shall cause the Buyer Performance Assurance to be replenished to its original amount.

(c) Cooperation with Financing Parties. Buyer shall cooperate with Seller and any of Seller's financing counterparties to execute and arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and any other documents and information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

**5.5 *Guaranteed Energy Production; Full Capacity Deliverability Status.***

(a) Guaranteed Energy Production.

(i) During each Performance Period, Seller shall deliver to Buyer an amount of Energy together with Excused Energy no less than eighty-five percent (85%) of the sum of the Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period (the "Guaranteed Energy Production").

(ii) In the event Seller's Energy deliveries together with Excused Energy are less than eight-five percent (85%) of the sum of the Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period (the difference a "Shortfall Amount"), Buyer shall be entitled to receive liquidated damages in the amount of the Shortfall Amount multiplied by $[redacted]/MWh (the "GEP Damages").

(iii) Within thirty (30) Days of the end of each Contract Year, Seller shall provide to Buyer Seller's calculation of the Energy delivered to the Delivery Point together with Excused Energy during the preceding Contract Year. Buyer shall have thirty (30) days following receipt of such calculation to dispute the calculation therein, after which time the calculation shall be binding on the Parties. Any disputes regarding such calculation shall be resolved pursuant to Section 8.16.

(iv) Within sixty (60) Days of the end of each Performance Period, Buyer shall provide notice to Seller if Seller failed to satisfy the Guaranteed Energy Production along with Buyer's calculation of the Shortfall Amount and GEP Damages; provided, however, that Buyer's failure to provide such notice shall not constitute as a waiver of Buyer's right to collect GEP Damages.

(v) The Parties agree and acknowledge that the damages sustained by Buyer associated with Seller's failure to satisfy the Guaranteed Energy Production would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that the GEP Damages are a reasonable approximation of such damages. Buyer shall have the right to set off any GEP Damages against payments due to Seller.

(b) Full Capacity Deliverability Status ("FCDS").

(i) Seller's Obligation to Obtain FCDS. Seller shall apply to the CAISO to obtain FCDS for the Contract Capacity as soon as practical, but no later than December 1, 2021. Failure by Seller to apply for and to use commercially reasonable efforts to obtain FCDS shall be a Seller Event of Default pursuant to Section 3.4(a)(xii) and shall entitle Buyer to pursue remedies set forth in Section 3.4(b); provided, however, that if Seller has used commercially reasonable efforts to obtain FCDS, Seller's failure to obtain FCDS shall not be an Event of Default; provided, Seller shall not be obligated to pursue FCDS if either (i) the sum of Seller's out-of-pocket costs of studies, associated reports and nonrefundable network upgrade costs needed to apply for and secure FCDS exceeds [redacted] or (ii) Seller obtains any Interconnection Study results that indicate the cost of refundable network upgrades necessary to obtain FCDS would exceed [redacted].

(ii) Delivery of Capacity Rights. For Seller to obtain the Contract Price corresponding to having obtained FCDS, Seller shall have delivered Capacity Rights to Buyer for the corresponding Showing Month of the Delivery Term. The total amount of Capacity Rights identified and confirmed for each day of such Showing Month shall equal the then applicable Net Qualifying Capacity of the Facility. Seller shall deliver the Capacity Rights by submitting the Facility and its Net Qualifying Capacity to the CAISO in Seller's Supply Plan. Seller shall submit, or cause Seller's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the Net Qualifying Capacity delivered to Buyer. Seller shall confirm the Net Qualifying Capacity of the Facility to Buyer no later than the Notification Deadline for the relevant Showing Month. If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Net Qualifying Capacity for the Facility in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan, as applicable, for validation before the applicable deadline for the Showing Month. The Capacity Rights shall be deemed delivered and received when the CIRA Tool shows the Supply Plan accepted for the Net Qualifying Capacity from the Facility by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Net Qualifying Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term but Seller otherwise delivers the amount of Net Qualifying Capacity that Buyer does not direct Seller to withhold. Seller has failed to deliver the Capacity Rights if (i) Buyer has elected to submit the Net Qualifying Capacity from the Facility in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO, or (ii) Seller fails to submit in its Supply Plan the volume of Net Qualifying Capacity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer will have received the Net Capacity Rights if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Net Qualifying Capacity from Seller's Supply Plan for the applicable Showing Month but Seller otherwise delivers the amount of Net Qualifying Capacity that Buyer does not direct Seller to withhold. Seller will not have failed to deliver the Capacity Rights if Buyer fails to submit or chooses not to submit the Facility and the Net Qualifying Capacity in its Resource Adequacy Plan with the CPUC or CAISO.

(iii) For any month of the Delivery Term after Seller has obtained FCDS, but during which Seller fails to deliver Capacity Rights for the full Qualifying Capacity for the entire month (each an "RA Shortfall Month"), Seller shall owe to Buyer, as liquidated damages, an amount equal to the product of the difference, expressed in kW, of (A) the Qualifying Capacity of the Facility, minus (B) the Net Qualifying Capacity of the Facility (such difference, the "RA Deficiency Amount"), multiplied by the price for CPM Capacity as listed in Section 43.7.1 of the CAISO Tariff (or its successor); provided, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice at least fifty (50) Business Days before the applicable CPUC operating month for the purpose of monthly RA reporting.

**5.6 *Access Rights.***

Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Applicable Law relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees, contractors and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment; and, (b) for other reasonable purposes at the reasonable request of Buyer; provided, such access shall take place during normal business hours and Buyer shall observe all applicable safety rules made known to Buyer's employees, contractors and authorized agents and shall indemnify Seller for the actions of its employees, contractors and authorized agents for harm or liabilities caused by Buyer, its employees, contractors or authorized agents during such Site visits. Buyer shall release Seller against and from any and all liabilities resulting from actions or omissions in connection with Buyer's visits to the Site, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of Seller or Seller's contractors.

**5.7 *Facility Images.***

Buyer shall not, without the prior consent of Seller (such consent not unreasonably withheld, conditioned or delayed) use any images from or of the Facility for promotional purposes.

## ARTICLE 6
## INDEMNIFICATION AND INSURANCE

**6.1 *Indemnity.***

(a) Subject to Section 8.8 (waiver of certain damages):

(i) Each Party hereby protects, defends, indemnifies and holds harmless on an After-Tax Basis, the other Party, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from property damage, bodily injuries or death suffered by any Person (including, without limitation, employees of Buyer or Seller) related to, arising from, or connected to the representations, covenants or other obligations of the indemnifying party hereunder;

(ii) Seller shall defend, indemnify and hold harmless, on an After-Tax Basis, Buyer, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from Environmental Contamination (including claims brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act), interference with, death or injury to birds or bats, or other injury or damage to flora, fauna or the environment, including any mitigation efforts requested or required by any Governmental Authority;

(iii) Seller shall defend, indemnify and hold harmless, on an After-Tax Basis, Buyer, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from NERC standards non-compliance penalties or an attempt by any Governmental Authority, person or entity to assess such NERC standards non-compliance penalties against Buyer, except to the extent due to Buyer's negligence in performing its role as Scheduling Coordinator throughout the Term; and

(b) The indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that an act or omission of the indemnitee may have contributed to the loss, injury, property damage, charges, fees or liability. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence, fraud or willful misconduct. The indemnitor, upon the other Party's request, shall defend any suit asserting a claim covered by this indemnity and shall pay all costs, subject to the proportionality standard set forth above in the event of the indemnitee's contributory negligence, including reasonable legal fees, that may be incurred by the other Party in enforcing this indemnity; provided, that the indemnitor shall be entitled, at its option, to assume and control the defense with reasonable input from the indemnitee and any settlement of such suit shall first be submitted to the indemnitee for prior approval. If indemnitee fails to approve a settlement proposed by indemnitor, indemnitor may settle such claim on its behalf only, without relinquishing any rights of indemnitee. If the indemnitee fails to approve any such settlement, indemnitor's liability to the indemnitee will be capped at a level equal to the proposed settlement amount, plus attorney fees and expenses incurred by the indemnitee prior to the indemnitee's rejection of the proposed settlement. Each indemnity set forth in this Section 6.1 is a continuing obligation, separate and independent of the other obligations of each Party and survives the expiration or termination hereof. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

**6.2 *Insurance.***

(a) Seller, at its own cost and expense, shall maintain and keep in full force and effect from the date ninety (90) days after the Effective Date through the later of the date of expiration or termination of the Agreement, the following insurance coverage (collectively, the "Insurance Obligations"):

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limit of one million dollars ($1,000,000) for disease and injury to employees;

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of one million dollars ($1,000,000);

(iii) Business Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than 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 automobiles in the performance of the Agreement;

(iv) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than ten million dollars ($10,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 6.2 can be provided by any combination of Seller's primary and excess liability policies; and

(v) Such insurance against loss or damage as is prudently carried by businesses operating facilities in the nature of the Facility.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date ninety (90) days after the Effective Date through the expiration or termination of the Agreement. All insurance coverage, required by this Agreement, other than self-insurance, shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations.

(c) All insurance policies shall include provisions or endorsements stating any cancellation or non-renewal of the insurance required by this Section 6.2 without thirty days (30) days prior written notice and cancellation for non-payment of premium shall be effective at least ten (10) days after the insurer provides notice of such cancellation to Buyer.

(d) The insurance required above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or operation of the Facility.

(e) Within ninety (90) days of the Effective Date, and within three (3) days after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2.

(f) Self-Insurance.

(i) Seller may self-insure the Insurance Obligations to the extent Seller or an Affiliate of Seller (as applicable, the "Self-Insurer"), maintains a self-insurance program under which Seller is insured; provided that, the Self-Insurer's Credit Rating is rated at Investment Grade, or better, by S&P. Seller shall provide Buyer with no less than one hundred twenty (120) days prior written notice of its intent to self-insure the Insurance Obligations.

(ii) For any period of time that the Self-Insurer is unrated by S&P or the Self-Insurer's Credit Rating is rated at less than Investment Grade by S&P, Seller shall comply with the insurance obligations applicable to it under this Section 6.2.

(iii) In the event that Seller self-insures in accordance with this Section 6.2(f), it shall not be required to comply with the insurance requirements set forth in Sections 6.2(a)-6.2(e).

(iv) The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations.

(v) Seller shall furnish to Buyer a letter of self-insurance in the event that Seller intends to self-insure in accordance with this Section 6.2(f). Seller's failure to provide the letter of self-insurance shall not limit or relieve Seller of the duties and responsibility of maintaining insurance or self-insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2 by Buyer.

## ARTICLE 7
## GOVERNMENT APPROVALS

### 7.1 *Government Approvals – Seller's Obligation.*

Seller shall secure and maintain, at no cost to Buyer, all Permits (including environmental permits), easements, rights-of-way, releases and other approvals necessary for the construction, engineering, operation and maintenance of the Facility and the performance by Seller of its obligations hereunder.

### 7.2 *Government Approvals – Buyer's Obligation.*

Buyer shall secure and maintain, at no cost to Seller, all government approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Buyer of its obligations hereunder.

### 7.3 *Changes In Law.*

Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard, and that

Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in law. Seller agrees (subject to Section 3.3) to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Rights or Renewable Energy Credits as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible as an ERR and other benefits under the California Renewables Portfolio Standard; provided, Seller shall have no obligation to modify this Agreement, submit any reports, data, or other information or take other actions that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

## ARTICLE 8
## MISCELLANEOUS

**8.1** ***Confidential Information.***

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Facility that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "Confidential Information"); provided that in order for such information, processes, know-how, techniques and procedures to be considered "Confidential Information," the Party disclosing such information must: (i) if disclosure is in writing or other tangible electronic storage medium, clearly mark such item as "Confidential" or "Proprietary" or (ii) if the disclosure is oral or visual, the disclosing Party must, within three (3) Business Days thereafter, follow up with a disclosure complying with the requirements of clause (i) above. Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Section 8.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by Applicable Law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Facility and for the purposes of the negotiation or implementation of this Agreement, who shall be bound by the terms of this Section 8.1;

(iii) Use such Confidential Information solely for the purpose of developing the Facility and for purposes of this Agreement; and

(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 8.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any necessary filing; provided, that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party; provided, that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by the Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including the California Public Records Act); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders and any other financial institutions expressing an interest in providing equity or debt financing or refinancing or credit support to Seller, and the agent or trustee of any of them. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement. Seller shall be responsible for any breach of this Section 8.1 by the Lenders or such other financial institutions.

(e) Notwithstanding the foregoing, Buyer may disclose Confidential Information to WREGIS, CAISO or other Persons for purposes of ensuring Buyer receives the benefit of, or credit for, Green Attributes, Capacity Rights, Renewable Energy Credits, and to downstream purchasers of Product; provided the form and content of such disclosure is subject to Seller's approval, which approval may not be unreasonably withheld, conditioned or delayed; and provided, further, that Buyer may disclose without Seller's approval: (i) the Facility's name, location, interconnection characteristics, size, monthly resource forecast and historical generation, expected Commercial Operation Date, and (ii) any Confidential Information necessary (A) to schedule Energy, (B) for the generation of an e-tag or successor mechanism, or (C) export Energy out of California to obtain the benefit of any commercial advantage provided to solar energy generators by state or federal legislation favoring renewable or non-carbon generation. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement.

(f) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 8.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Facility or as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 8.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

**8.2 *Successors and Assigns; Assignment.***

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

(b) Neither Party may assign or transfer by this Agreement, whether voluntarily or by operation of law, and including with respect to any change in control, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, no consent shall be required for any change of control of Seller, or any assignment of this Agreement by Seller, to (i) any Lenders providing debt or tax-equity financing, including as collateral security for obligations under the debt financing documents entered into with such Lenders, or (ii) any Permitted Transferee; provided that Seller shall provide Buyer twenty (20) Days advance written Notice of Seller's intent to assign this Agreement to a Permitted Transferee, and Buyer shall have twenty (20) Days from its receipt of such Notice, to confirm to Seller whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if Buyer shall fail to so respond within such twenty (20) Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

**8.3 *Lender Rights.***

(a) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement to a Lender providing debt or tax-equity for the purposes of financing the Facility and Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(d) If Seller encumbers its interest under this Agreement as permitted by this Section 8.3, upon the receipt of a written request from the Lender, Buyer shall execute, at the Seller's expense, a consent to assignment in a form substantially similar to the Form of Consent to Assignment attached hereto as **Exhibit E**. Buyer shall, upon a commercially reasonable request by Seller or a Lender, and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, within thirty (30) days of such request, those normal, reasonable and customary certificates, opinions and other documents (including estoppel certificates related to a tax equity financing) and to provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Seller in consummating any debt financing or refinancing of the Facility or any part thereof; provided, that in responding to any such request, Buyer shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Buyer's rights, benefits, risks and/or obligations under this Agreement.

**8.4** ***Notices.***

Each notice, request, demand, statement or routine communication required or permitted under this Agreement, or any notice or communication that either Party may desire to deliver to the other, shall be in writing, and shall be considered delivered: (a) when received by the other Party if sent by certified U.S. mail or reputable overnight courier addressed to the other Party at its address indicated below; or (b) when electronic confirmation is received by the sending Party's facsimile machine if sent by facsimile addressed to the other Party at its facsimile number indicated below. Either Party may designate another address for itself in a written notice to the other Party in accordance with this Section 8.4.

| | |
|---|---|
| If to Seller: | Rugged Solar LLC<br>c/o Clean Focus Renewables, Inc.<br>150 Mathilda Pl # 106<br>Sunnyvale, CA 94086<br>Attn: Legal<br>Telephone: (408) 329-9280<br>Email: legal@greenskies.com |
| If to Buyer: | Valley Clean Energy Alliance<br>604 2nd Street, Davis, California 95616 |

Attn: Mitch Sears, Interim General Manager
Telephone: (530) 446-2750

With a copy to:

Keyes & Fox LLP
1580 N Lincoln Street, Suite 880, Denver, CO 80203
Attn: Kevin T. Fox
Telephone: (510) 381-3052
Email: kfox@keyesfox.com

With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:

Best, Best & Kreiger
500 Capitol Mall, Suite 1700, Sacramento, CA 95814
Attn: Harriet Steiner
Telephone: (916) 551-2821

**8.5 *Force Majeure.***

(a) The performance of any obligation required hereunder shall be excused to the extent required by, and during the continuation of, any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended, as required to overcome the effects of such Force Majeure Event. The Party experiencing the delay or hindrance shall orally notify the other Party as soon as reasonably practicable following the Force Majeure Event, and shall notify the other Party in writing of the occurrence of such Force Majeure Event, including the nature, cause, date and time of commencement of such event, and extent and anticipated period of delay, within fourteen (14) Days after becoming aware of the commencement of the Force Majeure Event; provided, that the failure of the Party experiencing the delay or hindrance to notify the other Party within such fourteen (14) Day period shall preclude such Party from claiming a Force Majeure Event hereunder for any Days prior to its notice. By way of example, if a Party first notifies the other Party of a Force Majeure Event thirty (30) Days after becoming aware of the commencement of such event, the claiming Party will only have its performance excused by reason of such Force Majeure Event for periods after its notice (i.e., on and after day thirty (30)). Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances.

(b) If Seller is unable to deliver, or Buyer is unable to receive, Energy due to a Force Majeure Event, then Buyer shall have no obligation to pay Seller for Energy not delivered or received by reason thereof. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure Event. In no event shall any delay or failure of performance caused by any conditions or Force Majeure Event extend this Agreement beyond its stated Term.

(c) Buyer shall have the absolute and unconditional right, but not the obligation, to terminate this Agreement upon thirty (30) Days written notice to Seller if: (i) a Force Majeure Event occurs that diminishes the Capacity of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months; or (ii) the Facility is damaged as a result of a Force Majeure Event and thereby rendered inoperable and an independent engineer that is mutually acceptable to the Parties determines that the Facility cannot be repaired or replaced within a period of time not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure Event.

(d) Either Party shall have the absolute and unconditional right, but not the obligation, to terminate this Agreement upon thirty (30) Days written notice to the other Party if either Party is prevented from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer due to a Force Majeure Event.

(e) Buyer's exercise of its termination right pursuant to Section 8.5(c), and either Party's exercise of its termination right pursuant to Section 8.5(d), shall be "no-fault" and no Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including for any outstanding payments due in the ordinary course that occurred prior to the termination, and Buyer shall return Seller's Operating Security within five (5) Business Days of such termination.

**8.6 *Amendments.***

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

**8.7 *Waivers.***

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

**8.8 *Waiver of Certain Damages.***

Notwithstanding any other provision of this Agreement, except to the extent indemnification payments are made pursuant to this Agreement as a result of an indemnified entity's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members) as a result of actions included in the protection afforded by the indemnification provisions hereof, and except with respect to the liquidated damages provided for in Sections 2.5(d), 2.5(e), 2.5(f), 5.5(a), and 5.5(b), neither Buyer nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

**8.9 *No Recourse to Buyer's Members***

Seller hereby acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq*.) pursuant to an agreement executed by the Cities of Davis and Woodland, and the County of Yolo (the "Joint Power Agreement"), that Buyer is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Buyer. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller acknowledges and agrees that it shall have no rights against, and shall not make any claim, take any actions, or assert any remedies against, any of Buyer's members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer's retail customers in connection with this Agreement.

**8.10 *Survival.***

Notwithstanding any provisions herein to the contrary, the obligations set forth in 2.2(e), 4.1, 4.3, 6.1, 8.1, 8.4, 8.8 through 8.16 shall survive (in full force) the expiration or termination of this Agreement.

**8.11 *Severability.***

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the original intent of the Parties.

**8.12 *Standard of Review.***

(a) Each Party represents and warrants to the other that it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. This Agreement constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the Parties intend to be physically settled and is excluded from the term "swap" as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

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

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

**8.13 *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.

**8.14 *Consent to Jurisdiction.***

Subject to Section 8.15, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Superior Court of Yolo County, California for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof (and agrees not to commence any suit, action or proceeding relating thereto except in such court). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by U.S. registered mail to such Party's respective address set forth in Section 8.4 will be effective service of process for any suit, action or proceeding in any such court with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the Superior Court of Yolo County, California and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

**8.15** ***Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

**8.16** ***Disputes.***

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then either Party may pursue any or all of its remedies available under law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof. Any undisputed payment due or payable by one Party to the other shall not be withheld on account of the occurrence or continuance of any legal proceedings or the existence of a Dispute.

**8.17** ***No Third-Party Beneficiaries.***

Except as set forth in a Lender Consent or the indemnification provisions hereof that expressly accrue to the benefit of third parties, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

**8.18** ***No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture or partnership between the Parties or to impose any such obligation or liability upon either Party. Except for the agency Seller grants Buyer in Section 3.2(c), neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

**8.19** ***Cooperation.***

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

**8.20 *Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 8.20.

**8.21 *Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

**8.22 *Entire Agreement.***

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**8.23 *Counterparts.***

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**8.24 *Forward Contract.***

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code (11 U.S.C. § 101 (2000)).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, representatives of the Parties have executed this Agreement on the date set forth below, causing this Agreement to be effective as of the Effective Date:

| **Rugged Solar LLC** | **Valley Clean Energy Alliance** |
|---|---|
| By:_______________________________ | By:_________________________________ |
| Name:___Stanley Chin_______________ | Name:_______________________________ |
| Title:____Authorized Signer___________ | Title:________________________________ |
| Date: ____March 16, 2020_____________ | Date:________________________________ |

## EXHIBIT A

## CONTRACT PRICE

| |
|---|
| The Contract Price for all Product shall be:<br><br>$[redacted]/MWh until Seller obtains Full Capacity Deliverability Status; or<br><br>$[redacted]/MWh once Seller obtains Full Capacity Deliverability Status. |

**EXHIBIT B**

**DESCRIPTION OF FACILITY**

1. Facility name:

   Rugged Solar

2. Facility location:

   The Facility is located at 2750 McCain Valley Road, in San Diego County, in the State of California

3. Technology type:

   Solar photovoltaic

4. Interconnection Point of Facility:

   The Facility's Interconnection Point shall be Boulevard East Substation in Boulevard, California, which is he point of first interconnection of the Facility with the CAISO Controlled Grid

5. Service territory of Facility:

   San Diego Gas & Electric Company

6. Description of Facility equipment:

   74 MVA AC

   SMA 2500 inverters

   ATI single Axis tracking system

   229, 032 390 W Bifacial modules

   A Photovoltaic Array, with photovoltaic modules mounted on trackers oriented towards the sunthat rotate East-Westto track the sun. Trackers would bearranged around inverter stations.

   A collection system linking the trackers to the on-site substation would consistof 1,000-volt (V) DC underground conductors leading to 34.5 kV underground and overhead AC conductors.The collection system would be located within the same development footprint as the Photovoltaic Array.

   A collector substation within a fenced area of approximately 6,000 square feet. The on-site substation would include a 450-square-foot control house.

A 60-foot by 125foot (4,500-square-foot) Operations and Maintenance (O&M) facility, which includes a 900 square foot storage and conference room. The O&M building would be used for employee operations, and maintenance of equipment.

The on-site substation would include a 450-square-foot control house.

7. Description of Site:

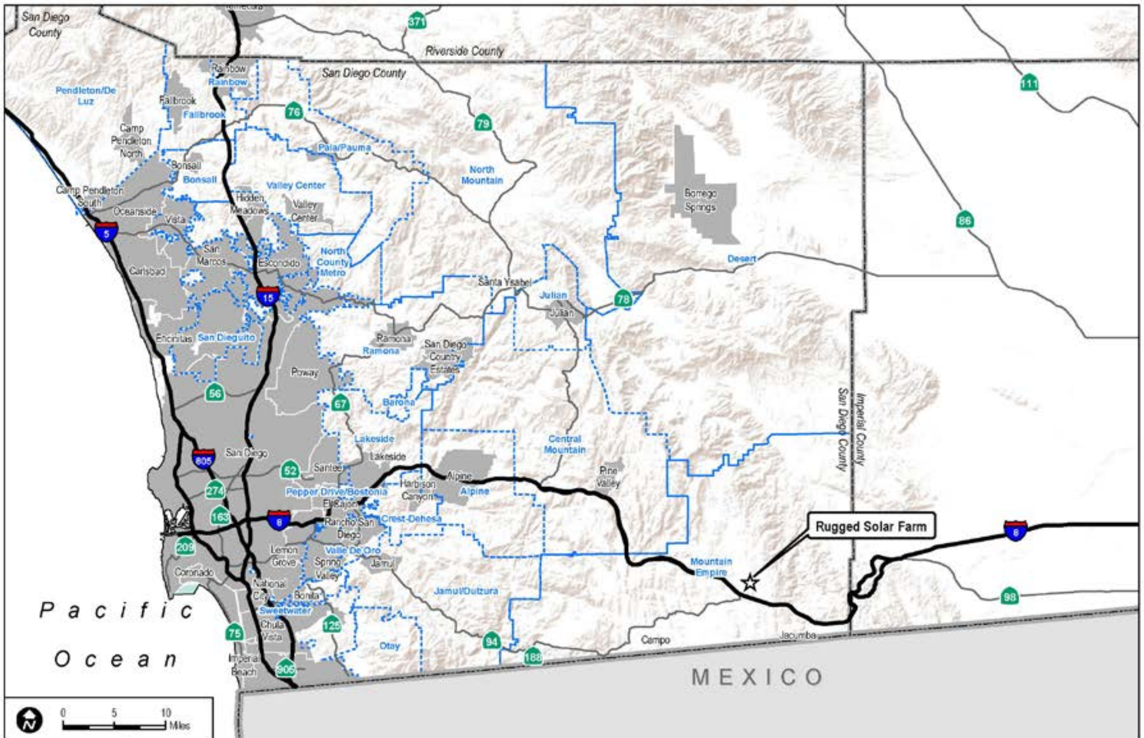
The Project site encompasses a total of approximately 765acres within the Mountain Empire Subregional Plan area in unincorporated San Diego County. The Mountain Empire Subregional Plan area contains five subregional group areas. The Proposed Project site is located in the Boulevard Subregional Plan area.

The Project site is located north of Interstate 8 (I-8) to the east of Ribbonwood Road and primarily west of McCain Valley Road. Regional access to the Project site would be provided by I-8. Access to the Project site would be provided by McCain Valley Road.

The Project site includes the following parcels to west of McCain Valley Road: Assessor Parcel Number (APN) 611-060-04, 611-090-02, 611-090-04, 611-091-03, 611-091-07 (portion), 611-100-07, 612-030-01, and 612-030-19. One parcel (APN 611-110-01) is located to the east of McCain Valley Road.

8. Maps:

The Facility's location is identified in the following map:




DUDEK

7345

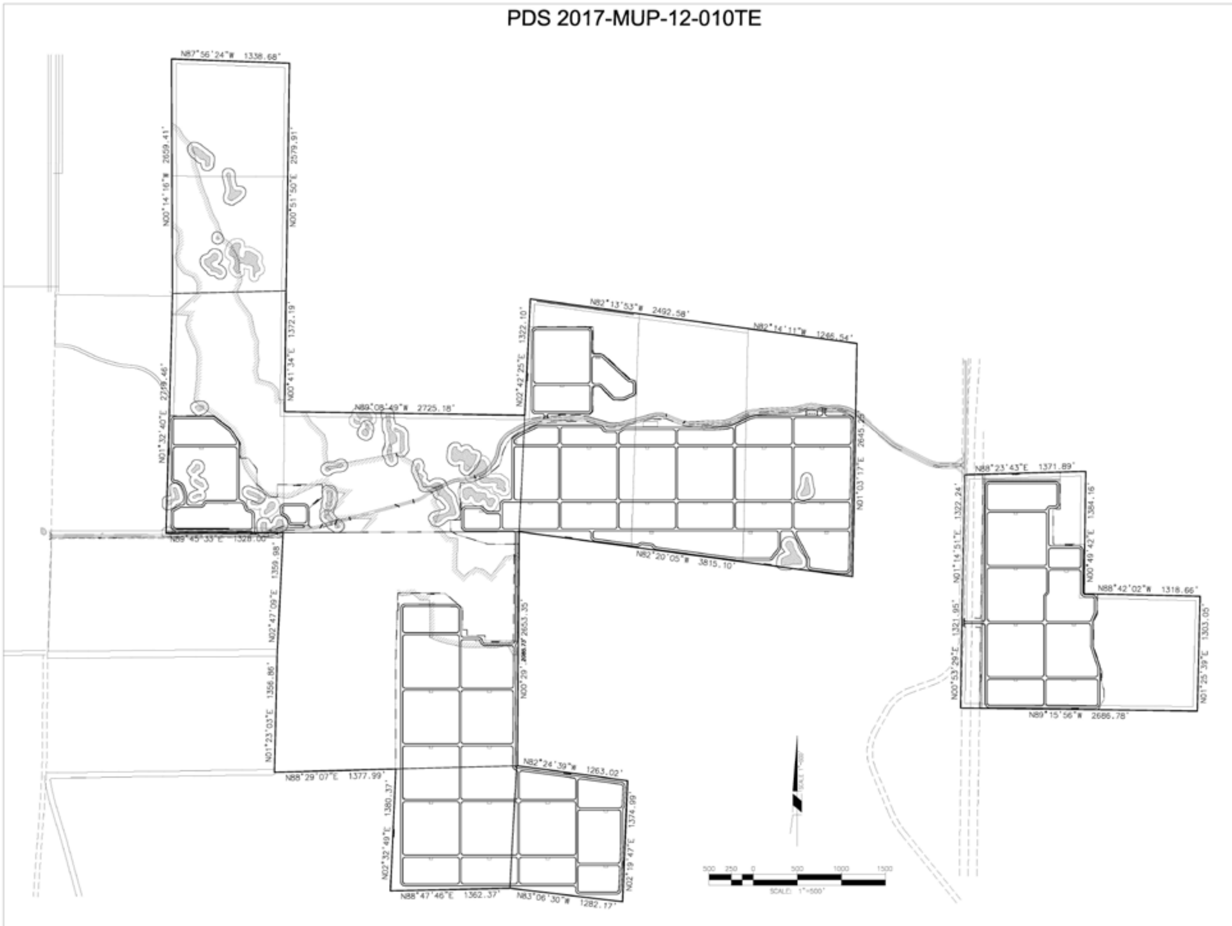
FIGURE 1-1

**Regional Location Map**

CLEAN FOCUS DEVELOPMENT PROGRAM EIR

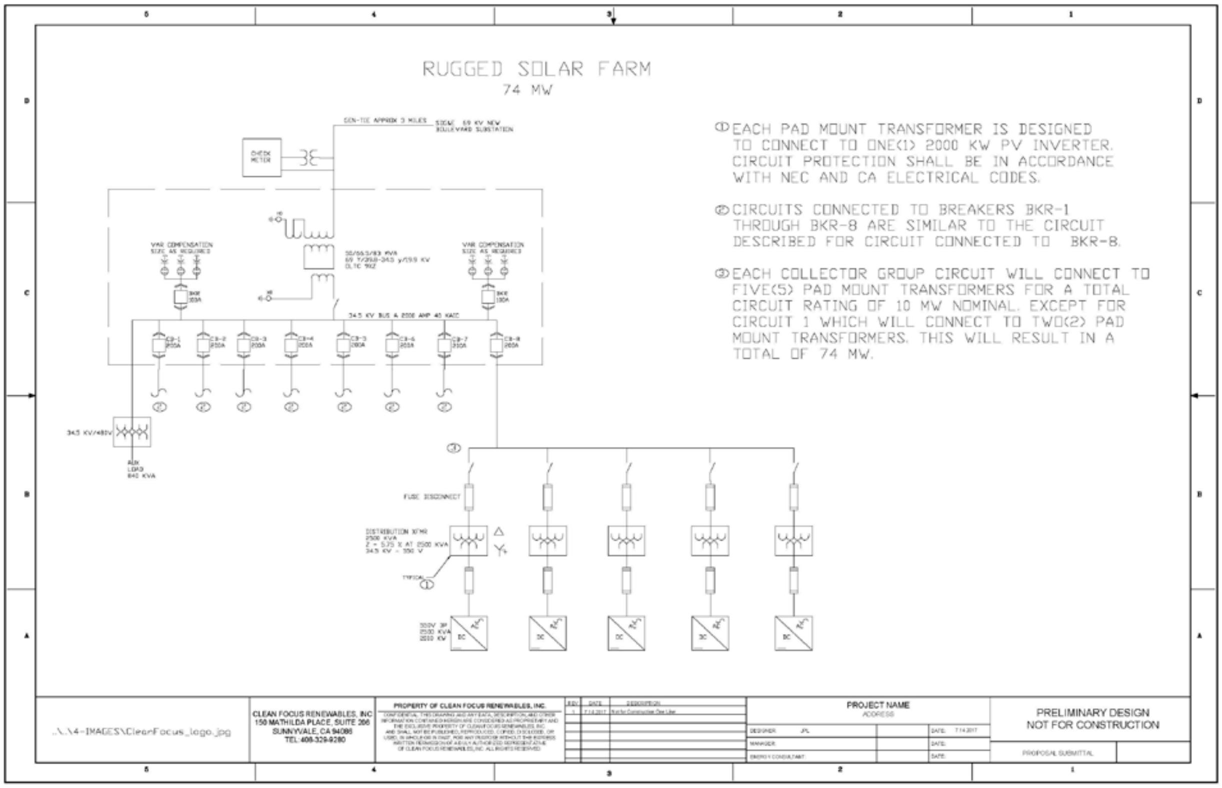
**EXHIBIT B-1**
**FACILITY SITE PLAN**

The Facility will be located at the Site as show on the map below:



## EXHIBIT C

## DESCRIPTION OF INTERCONNECTION POINT, DELIVERY POINT, AND ONE-LINE/METERING DIAGRAM



# EXHIBIT D

**[RESERVED]**

## EXHIBIT E

## FORM OF LENDER CONSENT

## (FINANCING)

FORM OF CONSENT AND AGREEMENT
POWER PURCHASE AGREEMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of ___________, 20[ ], is executed by and between Valley Clean Energy Alliance, a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq*.) (the “Contracting Party”), and [NAME OF COLLATERAL AGENT], as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. Rugged Solar LLC, a limited liability company organized and existing under the laws of Delaware (the “Facility Owner”) owns, operates and maintains a 71.88 MW-AC single-axis tracking solar energy generating facility located in San Diego County, CA, which will be dedicated to Valley Clean Energy Alliance (the “Facility”).

B. The Contracting Party and the Facility Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”).

C. The Borrower, the Facility Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_______], as the Administrative Agent and Collateral Agent, [_______], as Lead Arrangers, have entered into a Credit Agreement, dated as of [_______] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Facility Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Facility Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the [Security Agreement], dated as of [_______] between the Facility Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating thereto, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Facility Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE , for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Additional Definitions. Any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Assigned Agreement.

2. Consent to Assignment. Subject to the terms and conditions below, the Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Facility Owner in, to and under the Assigned Agreement by the Facility Owner to the Collateral Agent pursuant to the Security Agreement.

3. Limitations on Assignment. Collateral Agent acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document or this Consent, Collateral Agent shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Collateral Agent or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Facility Owner under the Assigned Agreement which are capable of being cured and which are not personal to the Facility Owner (e.g., a default such as bankruptcy), (b) executes and delivers to Contracting Party a written assumption of all of Facility Owner's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to Contracting Party, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement which are capable of being complied with and satisfied, (d) provides such tax and enforceability assurance as Contracting Party may reasonably request, and (e) is a Permitted Transferee (as defined below). Collateral Agent further acknowledges that the assignment of the Assigned Agreement is for security purposes only and, except as otherwise expressly provided in this Consent, that the Collateral Agent has no rights under the Assigned Agreement to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Collateral Agent (a "Financing Default"), in which case, upon Collateral Agent's assuming the Assigned Agreement as provided herein, the Collateral Agent shall be entitled to all of the rights and benefits and subject to all of the obligations which Facility Owner then has or may have under the Assigned Agreement to the same extent and in the same manner as if Collateral Agent were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is at least as creditworthy as the Facility Owner on the Effective Date (as defined in the Assigned Agreement) and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating solar, wind or other renewable energy generating facilities in the CAISO market. Collateral Agent may from time to time, following the occurrence of a Financing Default, notify Contracting Party in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and Contracting Party shall, within thirty (30) Business Days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if Contracting Party shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, Contracting Party shall, concurrently with the delivery of any notice of an Event of Default under the Assigned Agreement to Facility Owner (a "Default Notice"), provide a copy of such Default Notice to the Collateral Agent pursuant to Section 10 of this Consent.

(b) The Collateral Agent shall have the right, but not the obligation, following Contracting Party's issuance of a Default Notice to the Facility Owner under the Assigned Agreement to pay all sums due under the Assigned Agreement by the Facility Owner and to perform any other act, duty or obligation required of the Facility Owner thereunder as described in Section 4(d) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Facility Owner under or in respect of the Assigned Agreement.

(c) The Contracting Party agrees that it will not terminate the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided in Sections 4(a) and 4(d).

(d) If the Collateral Agent elects to exercise its right to cure as herein provided, it shall provide written notice to Contracting Party prior to the end of any cure period as set forth in the Assigned Agreement. If the Default Notice is issued because of a payment default by Facility Owner, the Collateral Agent shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in Section 4(a) in which to cure the payment default specified in such Default Notice, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Facility Owner (a "Non-monetary Event") the Collateral Agent shall have such longer period as is required to cure such default, not to exceed ninety (90) days, so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default; provided, however, that (i) if possession of the Facility is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Facility Owner, then the time periods specified herein for curing the Non-monetary Event shall be extended for the period of such prohibition (but in no event longer than 180 days).

(e) Any curing of or attempt to cure any default shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Facility Owner under or in respect of the Assigned Agreement, provided, however, if Collateral Agent, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Collateral Agent must assume all of Facility Owner's obligations arising under the Assigned Agreement.

5. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Facility Owner, and if Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with Contracting Party for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection or termination, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement, subject to the Collateral Agent or its designee curing all outstanding monetary defaults under the Assigned Agreement and all other non-monetary defaults under the Assigned Agreement which are reasonably susceptible of being cured.

6. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of possessory remedies following a default under the Financing Documents, the Collateral Agent must cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume all of the interests, rights and obligations of the Facility Owner thereafter arising under the Assigned Agreement as a condition of the sale or transfer; provided, however, that prior to such assumption, if the Contracting Party advises the Collateral Agent that the Contracting Party will require that one or more outstanding defaults under the Assigned Agreement be cured in order to avoid the exercise by the Contracting Party of its right to terminate the Assigned Agreement pursuant to Section 4(c) above, then Collateral Agent, at its option and in its sole discretion, may elect to either: (i) cause such defaults to be cured, in which case, the Assigned Agreement will be assumed by the purchaser, or (ii) not cause such defaults to be cured, in which case, the Assigned Agreement will not be assumed by the purchaser. In case of an assumption of the Assigned Agreement, the assuming party shall be a Permitted Transferee and shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, and, the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement.

7. Representations and Warranties.

(a) Facility Owner and Collateral Agent each recognizes and acknowledges that Contracting Party makes no representation or warranty, express or implied, that Facility Owner has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement. Collateral Agent is responsible for satisfying itself as to the existence and extent of Facility Owner's right, title, and interest in the Assigned

Agreement, and Collateral Agent releases Contracting Party from any liability resulting from the assignment for security purposes of the Assigned Agreement.

(b) The Contracting Party represents that on the date it provided this Consent that:

(i) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(ii) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Facility Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(iii) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 2, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the knowledge of the Contracting Party: (A) there exists no event or condition (a "Termination Event") that would entitle either the Facility Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement; (B) [except as set forth on Schedule II hereto,] there are no unresolved disputes between the parties under the Assigned Agreement; and, (C) all amounts due under the Assigned Agreement as of the date hereof have been paid in full[, except as set forth on Schedule II hereto].

8. Setoffs and Deductions. Each of Facility Owner and Collateral Agent agrees that Contracting Party shall have the right to set off or deduct from payments due to Facility Owner each and every amount due Contracting Party from Facility Owner whether or not arising out of or in connection with the Assigned Agreement. Collateral Agent further agrees that it takes the assignment for security purposes of the Assigned Agreement subject to any defenses or causes of action Contracting Party may have against Facility Owner.

9. Payments. The Contracting Party shall make all payments due to the Facility Owner under the Assigned Agreement directly into the account specified on Schedule III hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Facility Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

10. Notices. Notice to any party hereto shall be in writing, sent to the respective addresses below, and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if sent postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile,

the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [NAME OF COLLATERAL AGENT]
[ ]
Attn: [ ]
Telephone No.: [ ]
Facsimile No.: [ ]

The Contracting Party:
[ ]
Attn: [ ]
Telephone No.: [ ]
Facsimile No.: [ ]

11. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors, transferees and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Facility Owner and their respective successors, transferees and assigns.

12. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of New York.

14. No Modification. This Consent is neither a modification of nor an amendment to the Assigned Agreement.

15. No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

16. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Consent.

17. Severability. The invalidity or unenforceability of any provision of this Consent shall not affect the validity or enforceability of any other provision of this Consent, which shall remain in full force and effect.

18. Amendments. This Consent may be modified, amended, or rescinded only by writing expressly referring to this Consent and signed by all parties hereto.

19. Joint Powers Authority. Collateral Agent hereby acknowledges that Contracting Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to an agreement executed by the Cities of Davis and Woodland, and the County of Yolo (the "Joint Power Agreement"), that

Contracting Party is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Contracting Party. Collateral Agent agrees that Contracting Party shall solely be responsible for all debts, obligations and liabilities accruing and arising out of the Assigned Agreement, and Collateral Agent agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of Contracting Party's members, any cities or counties participating in Contracting Party's community choice aggregation program, or any of Contracting Party's retail customers in connection with the Assigned Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

VALLEY CLEAN ENERGY ALLIANCE

By:_______________________
Name:
Title:

[NAME OF COLLATERAL AGENT]
as Collateral Agent

By:_______________________
Name:
Title:

Acknowledged:
[Seller's corporate entity]

By:________________________
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Disputes and Amounts Due and Unpaid under the Assigned Agreement
(Section 7(b)(iii))

Schedule III

Payment Instructions
(Section 9)

All payments due to the Facility Owner pursuant to the Assigned Agreement shall be made to

[INSERT REVENUE ACCOUNT INFORMATION].

## EXHIBIT F

## MINIMUM ANNUAL ENERGY PRODUCTION

| Contract Year | Minimum Annual Energy Production (MWh) |
|---|---|
| 1 | 191,796 |
| 2 | 190,837 |
| 3 | 189,883 |
| 4 | 188,933 |
| 5 | 187,989 |
| 6 | 187,049 |
| 7 | 186,114 |
| 8 | 185,183 |
| 9 | 184,257 |
| 10 | 183,336 |
| 11 | 182,419 |
| 12 | 181,507 |
| 13 | 180,599 |
| 14 | 179,696 |
| 15 | 178,798 |
| 16 | 177,904 |
| 17 | 177,014 |
| 18 | 176,129 |
| 19 | 175,249 |
| 20 | 174,373 |

**<u>EXHIBIT G</u>**

**LETTER OF CREDIT**

**[*ISSUING BANK]* IRREVOCABLE STANDBY LETTER OF CREDIT**

**[DATE OF ISSUANCE]**

[*BENEFICIARY*] ("**Beneficiary**")
[*Address]*
<u>*Attention*</u>: [*Contact Person*]

Re: <u>[ISSUING BANK] Irrevocable Standby Letter of Credit No.________</u>

Ladies and Gentlemen:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "**you**") this Irrevocable Standby Letter of Credit No. _______ (the "**Letter of Credit**") for the account of Valley Clean Energy Alliance ("**Account Parties**"), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

**1.** **<u>Stated Amount</u>.** The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount]* United States Dollars (US$[*dollar amount*]) (such maximum amount referred to as the "**Stated Amount**").

**2.** **<u>Drawings</u>.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to <u>*[ISSUING BANK]*</u>, at any time during its business hours on such Business Day, at *[bank address]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered <u>*paragraph 9*</u> hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of <u>*Attachment A*</u> hereto (the "**Draw Certificate**"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of <u>*Attachment B*</u> hereto (the "**Draft**"), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to <u>*[ISSUING BANK]*</u> at our address set forth above, <u>*Attention*</u>: ___________ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered <u>*paragraph 9*</u> below). In the event of a presentation by facsimile transmission, the original of such documents shall be sent to us by overnight mail.

**3.** **<u>Time and Method for Payment</u>.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [_______] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_______] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

**4.** **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

**5.** **Cancellation.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

**6.** **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the "**Initial Expiration Date**"). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

**7.** **Business Day.** As used herein, "**Business Day**" shall mean any day on which commercial banks are not authorized or required to close in the State of [New York], and inter-bank payments can be effected on the Fedwire system.

**8.** **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

**9.** **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

**10.** **Irrevocability.** This Letter of Credit is irrevocable.

**11.** **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to or to which this Letter of Credit relates, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

*SINCERELY,*
[ISSUING BANK]

_________________________

By: ________________________

Title: _______________________
Address:

## ATTACHMENT A

## FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [*ISSUING BANK*] ("**Issuer**"), with reference to Irrevocable Letter of Credit No. ________________ (the "**Letter of Credit**") issued by Issuer in favor of the undersigned ("**Beneficiary**"), as follows:

(1) The undersigned is the ____________ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Certificate, for payment of _______________________ U.S. dollars (US$__________), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).

(3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: ____________________
Title: __________________
Date: __________________

(5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: ____________________

Title: __________________

Date: __________________

**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. ________________**

Date:

PAY TO: [*BENEFICIARY*]

U.S.$ __________________

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. _________________.

[*BENEFICIARY]*

By: ____________________

Title: __________________

Date: __________________

**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

Irrevocable Letter of Credit No. _______________

The undersigned, being authorized by the undersigned ("**Beneficiary**"), hereby certifies on behalf of Beneficiary to [*ISSUING BANK*] ("**Issuer**"), with reference to Irrevocable Letter of Credit No. ______________ issued by Issuer to Beneficiary (the "**Letter of Credit**"), that all obligations of [PROJECT ENTITY], an affiliate of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to *Section 5* thereof, the Letter of Credit shall expire upon Issuer's receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: ____________________

Title: __________________

Date: __________________

## EXHIBIT H

## EXPECTED ENERGY

| Contract Year | Expected Annual Generation (MWh) |
|---|---|
| 1 | 222,820 |
| 2 | 221,706 |
| 3 | 220,597 |
| 4 | 219,494 |
| 5 | 218,397 |
| 6 | 217,305 |
| 7 | 216,218 |
| 8 | 215,137 |
| 9 | 214,062 |
| 10 | 212,991 |
| 11 | 211,926 |
| 12 | 210,867 |
| 13 | 209,812 |
| 14 | 208,763 |
| 15 | 207,720 |
| 16 | 206,681 |
| 17 | 205,648 |
| 18 | 204,619 |
| 19 | 203,596 |
| 20 | 202,578 |

## EXHIBIT I

## MILESTONE SCHEDULE

| | | |
|---|---|---|
| 1 | 10/27/2018 | Execute Interconnection Agreement (executed) |
| 2 | 10/31/2019 | Receive CEC pre-certification |
| 3 | 6/30/2020 | Procure Major Equipment |
| 4 | 3/31/2020 | Obtain Federal, State, and Local Discretionary Permits |
| 5 | 9/30/2020 | Expected Construction Start Date |
| 6 | **12/1/2020** | **Guaranteed Construction Start Date** |
| 7 | 4/1/2021 | Target Commercial Operation Date |
| 8 | **12/1/2021** | **Guaranteed Commercial Operation Date** |
| 9 | 12/1/2021 | Submit Application for Full Capacity Deliverability Status |
| 10 | **4/1/2022** | **Guaranteed Contract Capacity Date** |

# ATTACHMENT A

## FORM OF MILESTONE SCHEDULE REPORT

Within ten (10) Days after the end of each month following the Effective Date until the Commercial Operation Date, Seller shall provide Buyer a monthly written report of its progress toward meeting the Milestone Schedule in **Exhibit I** (the "Milestone Schedule Report"). Each Milestone Schedule Report must include the following items:

1. Summary of activities during the previous calendar month.
2. Forecast of activities scheduled for the current calendar month.
3. Bar chart schedule showing progress on achieving each of the Milestones in **Exhibit I**.
4. An explanation of the reasons for any missed Milestone and a detailed description of Seller's corrective actions to achieve the missed Milestone and all subsequent Milestones by the Guaranteed Commercial Operation Date.
5. List of issues that could potentially impact Seller's ability to achieve the Milestones.
6. Progress and schedule of all agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
7. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

**EXHIBIT J**

**FORM OF COMMERCIAL OPERATION CERTIFICATE**

This certification ("Certification") is delivered to Valley Clean Energy Alliance ("Buyer") by _________________, an independent electrical engineer that is not under direct employment by Rugged Solar LLC ("Seller") or any of its Affiliates and who is a licensed electrical engineer in California with at least five (5) years' experience constructing or operating solar photovoltaic facilities with a generating capacity of at least twenty (20) MW ("Engineer"). Capitalized terms that are not defined in this Certification are defined in the Agreement to which this Certification is a part. Engineer hereby certifies and represents to Buyer the following:

(a) Seller has completed installation of at least ninety-five percent (95%) of the Contract Capacity at 2750 McCain Valley Road, in San Diego County, in the State of California (the "Facility");

(b) At least ninety-five percent (95%) of the Contract Capacity has been installed and commissioned in compliance with all applicable manufacturers' supply, construction, and operating specifications;

(c) All the facilities required by the Interconnection Agreements, including Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities, have been installed, tested and are completed as required by the Interconnection Agreements;

(d) Seller has executed all necessary Transmission Provider and CAISO agreements, including all the Interconnection Agreements, and the CAISO has authorized deliveries from the Facility to the Delivery Point; and

(e) All testing required by Prudent Operating Practices or any requirement of law to operate the Facility has been successfully completed. ***"Prudent Operating Practices"*** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the solar electric generation industry that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the ___ day of ____________ 20__.

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020-___**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING ENTERING INTO A POWER PURCHASE AGREEMENT WITH RUGGED SOLAR, LLC AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, on August 13, 2018, Sacramento Municipal Unified District ("SMUD"), on behalf of VCE, issued a solicitation for Long Term Renewable power supply;

**WHEREAS**, after compiling and consolidating the technical details from each response received and evaluating for consideration, VCE Staff executed letters of intent, collected short list deposits, and began negotiating power purchase agreements ("PPA") for two (2) projects;

**WHEREAS**, Rugged Solar, LLC ("Rugged") is to construct a solar generating facility with transmission infrastructure in San Diego County, California;

**WHEREAS,** a PPA was negotiated with Rugged Solar, LLC for VCE to procure power from a seventy-two (72) MW photovoltaic solar facility.

**NOW, THEREFORE,** the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Power Purchase Agreement (PPA) by VCEA for 100% of the output for 20 years of the Rugged Solar Project under development by Rugged Solar LLC is hereby approved provided the counterparty (or counterparty's contractor) executes a Project Labor Agreement (PLA) by June 10, 2020.

2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel is authorized to approve minor changes to the PPA so long as the term and price are not changed.

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____________ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_______________________________________
Don Saylor, VCE Chair

___________________________________
Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with Rugged Solar LLC

## Attachment A

## Power Purchase Agreement with Rugged Solar LLC

**VALLEY CLEAN ENERGY ALLIANCE**
**BOARD OF DIRECTORS**

**Staff Report – Item 15**

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**TO:** VCE Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

**SUBJECT:** Approve Valley Clean Energy's Policy regarding potential PG&E allocation of Greenhouse Gas (GHG)-free (Large Hydro and Nuclear) resources to Community Choice Aggregators

**DATE:** May 14, 2020

---

**RECOMMENDATION**

1. Accept the 2020 allocation of large hydro, carbon free attributes paid for by VCE customers when that proposal is filed by Pacific Gas and Electric and ordered by the California Public Utilities Commission (CPUC).

2. Approve authority for VCE General Manager to execute agreement with PG&E for GHG-free resources.

**BACKGROUND**

VCE has set a goal for 2020 to serve customers with a minimum 75% GHG-free energy. In 2020, forty-two percent (42%) of VCE's GHG-free energy portfolio are resources that qualify as renewable energy under the state's renewable portfolio standard program (RPS) and 33% are resources that do not qualify under the RPS but are considered GHG-free. Large hydro and nuclear do not directly emit any GHG emissions, but don't qualify under the state's RPS.

VCE has procured all of the renewable resources and GHG free (large hydro) that we expect are required to meet this target in 2020. Prior to the current proposal to issue GHG-free allocations to CCAs, as additional CCAs started operating with their own GHG-free targets, staff saw the market for GHG-free resources become tighter and the cost increase.

PG&E owns or contracts for a number of GHG-free resources (including large hydro and nuclear from Diablo Canyon Power Plant). PG&E has been able to count these resources on its power content label (PCL) to meet its GHG-free targets. Load serving entities (LSEs), on the other hand, have been paying for those same assets through Power Charge Indifference Adjustment (PCIA), yet do not receive any of the GHG-free benefits – this includes VCE.

In mid-2019, CCAs approached PG&E to discuss whether PG&E would be agreeable to selling energy from their large hydro facilities[1]. PG&E ultimately refused to make sales in 2019, but subsequently approached CCAs and offered to allocate GHG-free resources (nuclear and large hydro) to CCAs and other eligible load serving entities (LSEs).

There is a separate, similar effort occurring in the PCIA Phase 2 Working Group 3 (WG 3) that is focusing on the allocation of GHG-free energy, among other things. Since the PCIA effort is expected to take effect in 2021, the allocations addressed in this staff report are considered an interim approach for 2020 only until PCIA decisions are finalized. Both the PCIA proposal and the interim allocation proposal are works in progress and subject to change pending final CPUC approval.

The purpose of this report is to provide background and information for the Board to consider staff's recommendation to accept VCE's share of the large hydro allocation but not the nuclear allocation under the interim proposal for 2020 only.

<u>Interim Proposal by PG&E</u>

The key elements of the interim proposal include:

- Limited in time to 2020
- Limited in the resources to which it applies:
  - In-state
  - Large hydroelectric
  - Nuclear
- Only available to retail suppliers whose customers pay PCIA with large hydroelectric and nuclear in their PCIA vintage
- Requires active agreement between retail suppliers to offer and to take generation
- Requires that the CPUC approve a mechanism for the allocation of such generation
- No payment required

There is no obligation to accept this allocation of GHG-free energy. An LSE can choose to accept neither resource pool, one or the other, or both.

The PCIA is a non-bypassable charge set annually by the CPUC. The interim proposal and allocation mechanism, and whether VCE accepts an allocation, has no impact on PCIA charges. Regardless of what happens with the allocation mechanism, all customers, VCE customers included, pay for, and will continue to pay for PG&E large hydroelectric and nuclear generation costs through the PCIA.

A link to the PG&E Advice Letter which details the interim proposal is included in the reference section at the end of this staff report.

---

[1] Large hydro and nuclear resources count as GHG-free on the power content label (PCL), and investor-owned utilities (IOUs) have been benefiting from counting those resources to meet their GHG-free targets. LSEs, on the other hand, have been paying for those same assets through PCIA, yet do not receive any of the GHG-free benefits through the PCL.

**ANALYSIS**

Under the interim proposal, PG&E will allocate to each eligible LSE its load share of large hydro (hydro pool) and/or nuclear resources (nuclear pool) based on an LSE's election. VCE accounts for approximately 1% of PG&E's share. Staff estimates that the allocation PG&E offers to VCE may contain the following:

• 40 GWh of large hydroelectric power
• 70 GWh of nuclear power

The volume that each LSE receives will ultimately depend on the volume of electricity generated by each resource pool in 2020 and the proportion of PG&E's load served by the LSE. PG&E has identified public historical production data for each resource pool and will provide ongoing allocation amounts for LSEs to forecast and keep track of allocation amounts.

VCE is eligible for this allocation as an LSE (as defined in the CAISO Tariff) that: (1) has forecasted load identified in PG&E's Energy Resource Recovery Account (ERRA) Forecast Application (ERRA Forecast Departed Load) for the calendar year in which the Allocation Amount is accepted; and (2) serves customers who pay the PCIA departing load charges for the above market costs of Resources.

On December 2, 2019, PG&E filed a Tier 3 Advice Letter and requested that the CPUC issue a final resolution by February 1, 2020. The interim proposal will only become effective upon CPUC approval of this Advice Letter and will remain in effect until the earlier of the effective date of a CPUC action on the PCIA Proposal Rulemaking (R.1706-026) ordering an alternative methodology (PCIA Decision) and December 31, 2020. In practice, this means through 2020.

Once the Advice Letter is approved and PG&E offers the allocation, the LSE has 30 days to accept its allocation of hydro and/or nuclear pool(s). Any unallocated amounts will revert back to PG&E to use or dispose as it sees fit pursuant to applicable law. It is anticipated on May 7, 2020, the CPUC will approve PG&E's advice letter.

In exchange for the allocation by PG&E, the receiving LSE "will waive their ability to make petitions, arguments or filings at the CPUC or at the California State Legislature regarding PG&E not offering any allocation, sale or transfer of Carbon Free Energy or attributes for the period that the eligible LSE accepts the offer. Neither PG&E nor the eligible LSEs will be required to post credit or collateral."

PG&E will provide each LSE with an annual attestation confirming actual year-end totals of generation from the Resource Pool(s) and notify the California Energy Commission of the sale of the Product for purposes of PCL reporting.

**FISCAL IMPACT**

VCE has already procured GHG-free resources for 2020. Accepting either allocation (hydro or nuclear) results in potential savings to VCE, and not any additional costs. If the PG&E proposal is approved, the market demand and price for these allocations are likely to drop. The table below estimates that the savings from the large hydro allocation could range from $0 to $240,000 and the nuclear allocation could be $0 to $420,000. The probability factors are based on SMUD's assessment of the likelihood of being able to sell the resource back into the energy market. For example, it is estimated that there is a high/moderate probability that there will be limited buyers in the market for the accepted GHG-free attributes in 2020 resulting in a $0 value for VCE. In this case, the value would be captured by VCE in having a higher than anticipated GHG-free portfolio in 2020. Note: if allocations are issued for future years with adequate advanced notice, CCA's can reduce energy costs by accepting the allocation(s) and not purchasing GHG-free attributes on the open market.

**Scenario Allocated GHG- Free Resources**

| Scenario | Forecasted Allocated Volumes (Large Hydro + Nuclear) | Min. Value – High/Moderate Probability (50%) | Med. Value – Low/Moderate Probability (40%) | Max. Value (current market price) – Low Probability (10%) |
|---|---|---|---|---|
| A (Hydro + Nuclear) | 110 GWh | $0 | Up to $120,000 | Up to $660,000 |
| B (Nuclear only) | 70 GWh | $0 | $0 | Up to $420,000 |
| C (Hydro only) | 40 GWh | $0 | Up to $120,000 | Up to $240,000 |

Scenarios to Consider

By accepting an allocation of carbon free energy from PG&E, VCE's GHG-free energy content could increase above its 75% target for 2020. Because VCE is already fully procured for 2020 to meet 75% of its forecasted demand with carbon free energy, there is also the potential for cost savings if staff attempts to re-market the allocations instead. Staff have prepared three scenarios to consider:

- Scenario A - PG&E offers carbon-free allocations up to VCE's load share percentage (1% of PG&E load), amounting to 110 GWh. VCE accepts all carbon-free allocations – both hydro pool and nuclear pool. Consider option to sell off allocation if buyers are available.

- Scenario B - PG&E offers carbon-free allocations up to VCE's load share percentage (1% of PG&E load), amounting to 70 GWh. VCE accepts the nuclear carbon-free allocations.

- Scenario C - PG&E offers carbon-free allocations up to VCE's load share percentage (1% of PG&E load), amounting to 40 GWh. VCE accepts the hydro pool carbon-free allocations.

- Scenario D - VCE rejects allocations from both resource pools.

To date, with the exception of one CCA, all are taking one or both of the allocations; at least two CCA's are taking the nuclear allocations. Some CCAs have discussed the topic with their Board's but are waiting on the CPUC decision before finalizing their approach.

Community Advisory Committee Recommendation

The Community Advisory Committee (CAC), considered the issues contained in this staff report at a special meeting on February 5th and were briefed again on the topic at the Feb. 27th meeting. At the Feb. 5th meeting, the CAC engaged in a detailed discussion about the advantages and drawbacks of accepting the allocations. The CAC voted 4-2 to support the staff recommendation to accept large hydro allocations from PG&E, but not accept the nuclear allocations. The CAC's support was subject to confirmation that: 1) VCE would only be getting the attributes and not the energy and 2) clarification and interpretation of meaning of the statement that the LSE (VCE) "will waive their ability to make petitions, arguments or filings at the CPUC or at the California State Legislature regarding PG&E not offering any allocation, sale or transfer of Carbon Free Energy or attributes for the period that the eligible LSE accepts the offer".

Note: the no votes by CAC members centered on different issues; one with lack of information on the underlying motivation to offer the allocations, and the second on an interest in accepting both allocations for the express purpose of using any cost savings to help fund VCE's priority local programs/projects.

At the Feb. 27th CAC meeting, staff did clarify for the CAC the above two concerns: 1) LSE's electing to accept these allocations are in fact only receiving allocations not the energy; and 2) confirmed that the LSE is only waiving their rights related to the 2020 allocation – not future proceedings.

**RECOMMENDATION**

Staff recommends that the Board adopt Scenario C (large hydro only). This is a challenging policy question due to the fact that regardless of VCE's decision: (1) the Diablo nuclear plant will continue to operate until 2024/25, and (2) VCE customers will pay for the GHG attributes from the plant through the PCIA charge. In addition, if there is a market for the attributes, the potential savings could help VCE advance its policy goals. These factors are balanced against the potential reputational risk associated with taking VCE's nuclear allocation.

Staff believes that:

- The potential reputational risk from accepting the nuclear allocation as part of our GHG-free target is greater than the potential savings for accepting this allocation.
- Although there could be monetary savings in 2020 from accepting the nuclear allocation, the likelihood is low.
- Generally nuclear is not considered a clean fuel source due to risks associated with spent fuel and practical long-term disposal options.

Based on these factors, staff believes that VCE is better served by accepting the hydro allocation for 2020 but not the nuclear allocation and should revisit this topic as the PCIA Working Group finalizes the approach for 2021 and beyond.

Reference Materials

PG&E Advice Letter: https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_5705-E.pdf

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020-___**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ACCEPTING THE 2020 ALLOCATION OF LARGE HYDRO POWER GREENHOUSE GAS ATTRIBUTES FROM PACIFIC GAS & ELECTRIC AND AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE RELATED AGREEMENTS**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, VCE set a goal for 2020 to serve customers with a minimum 75% GHG-free energy with 42% of VCE's 2020 Greenhouse Gas (GHG)-free energy portfolio resourced with renewable energy under the state's renewable portfolio standard program (RPS) and with 33% that do not qualify under the RPS but are considered GHG-free;

**WHEREAS**, large hydro and nuclear do not directly emit any GHG emissions, but do not qualify under the state's RPS program;

**WHEREAS**, VCE has procured all of the renewable resources and GHG free (large hydro) that VCE expects are required to meet this target in 2020;

**WHEREAS**, Pacific Gas and Electric (PG&E) owns and contracts for a number of GHG-free resources (including large hydro and nuclear) and count these resources on its power content label to meet its GHG-free targets;

**WHEREAS**, Load serving entities (LSEs), including Community Choice Aggregators (CCAs) such as VCE, have been paying for those same assets through Power Charge Indifference Adjustment (PCIA), but do not receive any of the GHG-free benefits;

**WHEREAS**, PG&E approached CCAs and offered to allocate GHG-free resources to CCAs and other eligible load serving entities (LSEs) requiring no payment, limited in time to the year 2020, and limited in the resources to which it applies (in-state, large hydroelectric, and nuclear);

**WHEREAS**, on December 2, 2019, PG&E filed a Tier 3 Advice Letter to the California Public Utilities Commission (CPUC) regarding this allocation and requested that the CPUC issue a final resolution on this matter;

**WHEREAS**, on May 7, 2020, the CPUC issued their decision approving PG&E's Advice Letter offering the allocation of which the LSE/CCA has thirty (30) days to respond; and,

**WHEREAS**, in exchange for the allocation by PG&E, the receiving LSE "will waive their ability to make petitions, arguments or filings at the CPUC or at the California State Legislature regarding PG&E not offering any allocation, sale or transfer of Carbon Free Energy or attributes for the period that the eligible LSE accepts the offer. Neither PG&E nor the eligible LSEs will be required to post credit or collateral."

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. Accept the 2020 allocation of large hydro carbon free attributes paid for by VCE customers when the proposal is filed by PG&E and ordered by the CPUC;

2. Reject the 2020 allocation of nuclear power carbon free attributes; and

3. The Interim General Manager is authorized to finalize, execute, and sign all agreements with PG&E on behalf of VCE and in consultation with legal counsel to implement the Board's decision.

**PASSED, APPROVED AND ADOPTED**, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of ________________, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

________________________________________
Don Saylor, VCE Chair

____________________________________
Alisa M. Lembke, VCEA Board Secretary

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 16**

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**TO:** Community Advisory Committee

**FROM:** Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Power Director
George Vaughn, Director of Finance & Internal Operations
Jennifer Archuleta, SMUD

**SUBJECT:** Preliminary Budget and Potential Policy Strategies for Fiscal Year 2020/21

**DATE:** May 14, 2020

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**RECOMMENDTION**

1. Provide feedback on potential policy strategies for fiscal year 2020/21 to help inform analysis and Board recommendations.

**OVERVIEW**

This report addresses three topics related to the fiscal 2020/21 budget: (1) updated electricity demand forecast for COVID/recessionary period; (2) preliminary budget projections; and (3) policy strategies to address potential FY 2020/21 budget shortfall. The demand forecast influences the preliminary budget which in-turn helps reveal the need for potential policy adjustments going forward. Staff is seeking directional guidance from the Board on the preliminary budget and potential policy adjustments and will provide final recommendations at the June Board meeting.

**BACKGROUND AND ANALYSIS**

**Section 1. Updated Load Forecast – COVID + Recession**

One of the factors impacting VCE's Fiscal Year 2020/21 Operating Budget is a reduction in load resulting from the COVID-19 global pandemic, shelter-in-place orders to protect public health, and the predicted economic recession. VCE staff have been monitoring the impacts to retail load since shelter-in-place orders were issued in mid-March.

The California Independent System Operator (CAISO), has observed average weekday load reductions of 4.5% since the first full week of the statewide shelter-in-place order. While VCE does not have real time access to load data for its territory, an analysis of similar utility impacts and PG&E regional impacts has informed VCE's estimate of in-territory load changes. We estimate residential load has increased approximately 5% and commercial load has decreased between 14% and 20% during the shutdown. Based on initial feedback from the agricultural community as reported to the Yolo County Board of Supervisors, local agricultural load has not been impacted at this time.

While a timeline for the lifting of shelter-in-place orders has not been defined at the time of drafting of this staff report, the state has indicated that counties will be allowed flexibility based on their ability to reopen in a phased manner while meeting the State's defined criteria. Given the current degree of uncertainty, VCE has developed three load scenarios to analyze potential budgetary impacts: (1) best case, (2) most likely case, and (3) worst-case. The FY 2020-21 Operating Budget included in Section 2 of this staff report is based on the most likely load scenario.

Brief descriptions of the best-case, most likely, and worst-case load scenarios are described below and summarized in Table 1. The three scenarios apply the same shutdown impacts and assume such impacts last through at least mid-June of 2020. Load recovery from shutdown level depends on a combination of policy and public perceptions that will drive business decisions, subsequent shutdown(s) if case levels rise, and the ability of the community to withstand recessionary impacts.

**Scenario 1 Forecast - Best Case**

The best-case load scenario forecast shows a 3.8% reduction in 2020 and a 2.3% reduction in 2021 from VCE's baseline load forecast. This scenario assumes a consistent load recovery rate between June 2020 and the end of 2021. The recovery timeline acknowledges that reopening will be phased, and we will not reach a complete "back to normal" until a vaccine or therapeutics are widely available. This scenario assumes that once all restrictions are lifted, there is no recessionary impact to VCE's load.

**Scenario 2 Forecast - Most Likely**

The most likely load scenario forecast shows a 3.8% reduction in 2020, a 3.6% reduction in 2021, a 3.3% reduction in 2022, a 2.5% reduction in 2023, and a 1.6% reduction in 2024 from VCE's baseline load forecast. This scenario assumes a phased reopening, with phases moving more slowly and/or a lesser degree of shelter-in-place being implemented as hotspots emerge. It shows commercial loads stagnating 2-6% below normal between 2021-2022 due to an economic recession, with the recession impact continuing to a lesser degree through 2024. This scenario also includes a decline in residential load due to extended periods of unoccupied housing stock during the recession.

**Scenario 3 Forecast - Worst Case**

The worst-case load scenario forecast shows an 8.0% reduction in 2020, an 8.7% reduction in 2021, a 7.3% reduction in 2022, a 3.5% reduction in 2023, and a 1.6% reduction in 2024 from VCE's baseline load forecast. It assumes an extended recession impact to all commercial classes with no load recovery in 2020 due to a second complete shutdown in fall and/or extended public concern driving businesses not to reopen regardless of policy. This scenario incorporates recessionary impacts to both ag and industrial load as well as earlier/deeper drops in residential load.

**Table 1 – Scenario Comparison, Impact on Power Costs & Revenue v. Base Case**

| | | Best Case* | Most Likely* | Worst Case |
|---|---|---|---|---|
| **2020** | Retail Load | -3.8% | -3.8% | -8.0% |
| | Power Costs | -1.9% | -1.9% | -4.0% |
| | Revenue | -4.2% | -4.2% | -8.3% |
| **2021** | Retail Load | -2.3% | -3.6% | -8.7% |
| | Power Costs | -1.6% | -2.7% | -6.0% |
| | Revenue | -2.3% | -3.7% | -8.5% |

*Forecast retail load, power cost, and revenue match for 2020 in the Best and Most likely scenarios due to assumed drop related to the COVID stay at home orders being gradually lifted over 2020.

VCE has analyzed the impact of these scenarios on power costs and revenues; as shown in Table 1 neither scale on a perfect 1:1 basis with load. Power costs decrease to a lesser degree than customer electricity load due to the nature of future energy procurement hedging, the need to continue to purchase Resource Adequacy to meet peak demand, and fixed contract renewable costs for 2020 and 2021. In addition, the revenue loss is slightly greater than the overall load loss due to the disproportionate loss from the commercial classes, which tend to have higher per kWh revenues as well as recovery of demand charges. In total, isolating the COVID and associated recessionary impacts for the most likely scenario show a potential revenue decline of $2.25 million for 2020 and $2.08 million for 2021. These impacts are included in the Preliminary Budget analysis in Section 2 below.

As forecasting experts in the energy sector work toward a reliable forecast for planning, there is widespread recognition of the remaining uncertainty. Information is changing daily, which may result in some assumptions being outdated even before the Board meeting is held on May 14. VCE will continue to closely monitor and adjust the load forecast as warranted by additional data.

Despite the uncertainty, staff have utilized the best available information to develop these forecasts which have been incorporated into the preliminary budget discussed in Section 2 of this report.

**Section 2. Preliminary Budget Update**

The purpose of this section of the staff report is to provide an update on the preliminary operating budget for FY 2020/21 (2021 Budget), that staff introduced at the March 2020 Board meeting and further expanded upon at the April 2020 Board meeting. Following this budget update, Section 3 of the staff report provides information on several potential policy decisions that may help offset anticipated negative net income in the 2021 Budget.

Final adoption of the 2021 Budget is scheduled for the June 11th Board meeting.

2021 Budget

At the March 12, 2020, Board meeting staff presented the 2021 Preliminary Budget. At the April 9, 2020, Board meeting staff further expanded upon the budget and provided potential mitigation measures. The budget presented in April forecasted a negative Net Income of -$5.6 million which has now been adjusted to -$5.2 million based on updated information. The significant negative income is due primarily to three factors that are outside of VCE's direct control, offset by one favorable factor:

- First, the 2021 Budget is impacted from anticipated negative revenue trends in FY 20/21 resulting from a significant increase in Power Charge Indifference Adjustment (PCIA) costs;
- Second, VCE faces a large increase in power costs due to rising resource adequacy (RA) costs and the assumption that the upcoming long-term solar projects will not begin delivering energy until the end of 2021 instead of mid-2021 as originally forecast;
- Third, as outlined in Section 1 of this staff report, VCE is impacted by an anticipated

reduction in load resulting from the COVID-19 global pandemic, shelter-in-place orders to protect public health, and the predicted economic recession;
- Somewhat offsetting these negative factors is an expected 3% increase in PG&E generation rates, anticipated to be effective in the summer of 2020; this is more favorable than the previously estimated reduction in PG&E generation rates. Since VCE matches PG&E generation rates, this is a direct impact on VCE's revenue

Additional detail on these primary drivers includes:

***PCIA*** – The revenue decline is driven by the following rate impact factors:
PCIA increased by 18% to approximately 3.2 cents per kWh starting May 2020 and will increase an additional 38% to approximately 4.4 cents per kWh starting in November 2020 due to the expectation that PG&E will file a cap exception trigger in 2020. As stated in the March 12, 2020 Board PCIA staff report, the CPUC issued its Final Decision on PCIA & ERRA. This decision largely adopted the Proposed Decision (PD), recommendations but did include approximately $93 million in overall PCIA reductions for PG&E. This $93 million reduction was one of the topics VCE and EBCE addressed in its joint meetings at the CPUC in February 2020.

Note: VCE, through CalCCA, is investigating options to defer and/or smooth this PCIA spike in late 2020. Staff will continue to be engaged in this discussion and report to the Board as these issues move through the CPUC process.

***Power Costs*** – Power costs have increased substantially from 2020 Budgeted amounts to the preliminary 2021 Budget power cost forecast. The increase of $8.3 million is due primarily to the market cost of RA increasing substantially over the past several years. Primary drivers for RA cost increases in this time period include: (1) a tightening market as fossil fuel baseload energy resources are retired and (2) shifting market rate design and requirements mandated by the CPUC. Other less significant contributing factors impacting VCE power costs include:

- Adding Winters load
- Renewable Energy Credit (RECs) cost increase
- Carbon-free energy cost increase
- Brown power market cost decrease

Rising RA costs have been a significant problem for the industry, with CCAs across the state also grappling with the issue. VCE and SMUD actively monitor and manage the long-term portfolio of RA to remain compliant with requirements and to procure power in as cost-effective way as possible. VCE also addresses RA cost volatility through direct participation and CalCCA involvement in regulatory proceedings.

Note that the recession impacts have reduced projected power costs from our previous budget by approximately $1 million.

***COVID/Recession Impacts*** – As noted in Section 1 above, the COVID and recessionary impacts for the most likely scenario show a potential revenue decline of $2.3 million for calendar year 2020 and $2.1 million for 2021, resulting in a $2.5 million revenue reduction for FY 2021 and associated $1.0 million reduction in power cost. See staff report Section 1 for additional details.

***PG&E Generation Rates*** – In past budget updates, VCE staff had assumed a 4% decline in PG&E generation rates for 2020. We are now assuming a 1.5% increase, which is comprised of flat generation rates until July 2020, at which point we are assuming a 3% increase due primarily to the PG&E General Rate Case (GRC). The regulatory experts that VCE and CalCCA utilize have modified their forecast of generation rates as new filings and updates have occurred.

<u>Preliminary 2021 Budget Key Assumptions/Factors</u>
The Preliminary 2021 Budget includes the following key assumptions/factors:

1. Power mix reflected in the Preliminary 2021 Budget remains unchanged from the prior year's budget with 42% renewable and 75% clean energy content;
2. COVID and recession impacts have been factored into the customer load, revenue and power costs;
3. The load forecast has been updated for 2020 and 2021 using actual load data, opt-out rates and opt-up rates. The retail load forecast for the FY 2021 is estimated at 677 GWh (down from 722 GWh in last budget update, due to COVID and recession impacts);
4. Energy cost includes: (1) system energy, (2) eligible renewables and (3) carbon free attributes which are estimated at $36.6 million, or 73.3% of the total power costs. Resource adequacy cost is forecasted at $13.3 million, or 26.7% of the total power costs.

**Budget Sensitivities**
<u>Impacts of Various COVID & Recession Impacts</u>
The forecasted COVID and recessionary impacts are analyzed in Section 1 of this report, including the development of three scenarios: (1) Best, (2) Most Likely, and (3) Worst cases.

- The Best Case scenario has a more rapid recovery from COVID and recessionary impacts with more of the positive impacts in future fiscal years, but still has a revenue reduction of $2.3 million compared to pre-recession forecasts, with a power cost reduction of $900K, resulting in an overall $1.4 million Net Income reduction.
- The Most Likely scenario, which represents our base case preliminary budget for FY 2021, features a revenue decrease of $2.5 million and associated power cost decrease of $1.0 million, resulting in a $1.5 million overall recessionary impact to Net Income.
- The Worst Case scenario results in more significant impacts, with slower recovery and a revenue reduction of $5.2 million in FY 2021, offset by a power cost reduction of $2.7million, netting in a $2.5 million overall reduction to Net Income.

<u>Budget Impact Summary</u>
As outlined above, VCE faces a challenging 2021 fiscal year, affected by COVID/recessionary impacts, rapidly escalating PCIA costs, and rising resource adequacy expenditures. Any one of these factors would create a challenging budget scenario, but the combination of all three has created a situation where VCE is facing a forecast loss of over $5 million. VCE staff believes that this is a great enough potential loss that the Board should consider implementing one or more policy levers in order to mitigate the budgeted loss while still enabling VCE to maintain it's customer, environmental, and operational goals. Section 3 of this Staff Report addresses those

potential policy strategies in detail.

**<u>Section 3. Potential Policy Strategies</u>**

As noted in the sections above, VCE and other CCA's face mounting fiscal challenges in the next several years. The potential policy strategies outlined in this section of the report are designed to help offset anticipated reduced net income in future budget cycles and assist with bridging the gap until lower cost long-term renewable energy contracts come on-line in late 2021/ early 2022. Staff is seeking feedback from the Board to help inform analysis and staff recommendations. Preliminary financial analysis associated with the potential strategies is introduced, which will continue to be analyzed leading up to Board consideration of the 2020/21 FY Budget on June $11^{th}$.

<u>Community Advisory Committee Consideration</u>

The Community Advisory Committee (CAC), considered and provided initial feed-back on the policy strategies at their April $23^{rd}$ meeting. Generally, CAC members supported action by VCE to address anticipated financial issues but agreed that potential impacts on customer opt-outs associated with the policy options should be carefully considered. CAC comments and assessments are summarized in the discussion below. Note: CAC relative priorities based on Staff summary of CAC discussion.

<u>Policy Strategy Options</u>

Staff have been researching and analyzing potential policy strategies to partially mitigate the negative net income highlighted in the preliminary FY 2020/21 Budget summary. As noted in previous Board reports and presentations, the potential policies range from rate adjustments to modification of energy procurement goals. The potential policies may be employed individually or in combination to off-set projected negative net income. Staff also notes that some policy options are available in the short-term (e.g. procurement modifications), while others may be better suited to study and longer-term implementation (e.g. rate changes).

In addition to the discussion below, staff has attached a summary table outlining several factors associated with each potential policy change (i.e. estimated fiscal impact, timing, etc.) (Attachment 1). Notes: (1) fiscal reserves will allow VCE to buffer PCIA and cost increases over the short-term. Therefore, while reserves can cushion the potential impact, early implementation of policy strategies may be fiscally advantageous; (2) staff will utilize Board feedback to inform recommendations for consideration at the June $11^{th}$ Board meeting.

**1. Rate Changes**

Potential options:

a. VCE has rate making authority and could choose to increase its combined generation rate (generation, PCIA and Franchise Fee Surcharge), above PG&E's generation rates. For every 1% that VCE's rates are above PG&E's generation rates, annual revenue will increase by approximately $800,000.
    - ***CAC Feedback – Assessment****: Not feasible without significant risk of high customer opt-out;* ***Relative Priority:*** *infeasible.*
    - ***Staff – Assessment****: Not feasible without significant risk of high customer opt-out;* ***Relative Priority****: lowest (see staff assessment in 1.b below).*

b. Add a third choice for customer rates that could be set near the minimum State standards for renewable energy content. This would allow customers the option to choose a more cost-effective rate (perhaps set at PG&E's generation rate), while maintaining VCE's other two current rate options that deliver higher renewable and GHG free attributes at a "cost plus" rate. This approach has been employed by Clean Power Alliance (LA/Ventura CCA).
   - ***CAC Feedback – Assessment****: General support but additional study needed to understand the advantages/disadvantages. Strong concern expressed by one CAC member about the difficulty of reversing the action (new rate choice), if VCE found it advantageous to do so in the future to advance other goals;* ***Relative Priority:*** *low/moderate.*
   - ***Staff – Assessment****: Helps address rate competitiveness and opt-out potential; could focus on price sensitive customer classes rather than creating a new rate. Could be combined with option 1.a "rate increase" policy option to maintain cost competitiveness for more price sensitive customer classes. Deeper evaluation could be tied to strategic planning process (longer-timeframe needed);* ***Relative Priority:*** *moderate. Suggest CAC Task Group on rates work with staff to investigate.*

**2. Power Resource Planning Adjustments**

Potential options:

a. Currently VCE's long-term renewable PPA's are anticipated to begin delivering energy and associated RA in mid-2021, displacing more expensive existing short-term renewable contracts (PCC1) and GHG free resources. Staff is analyzing the timing of these power deliveries in 2021 and when to dial back the existing short-term contracts. Aligning the actual start dates and end dates may result in a period where overall renewable and GHG levels in VCE's portfolio are much lower but averaged out to meet VCE's goals over a 2 or 3 year period as the higher levels of renewables from the long-term contracts come on-line. These power resource planning adjustments may result in a net cost savings over this 2-3 year period while still meeting VCE's regulatory compliance requirements. Staff analysis of the potential savings, which are dependent on timing of the adjustments and the level of transition out of short-term contracts, indicates VCE could save several million dollars over a 2 to 3 year period while still meeting VCE's renewable goals and state renewable standards.
   - ***CAC Feedback – Assessment****: General support with minor concern regarding potential impact on short-term power content label listing;* ***Relative Priority:*** *highest.*
   - ***Staff – Assessment****: provides flexibility in power procurement planning, ability to meet compliance requirements, cost savings with relatively low opt-out risk. Serves as bridge to long-term renewable contracts that will provide 50% of overall energy needs beginning in late 2021;* ***Relative Priority:*** *highest.*

3. **Additional Policy Levers**
    a. Accept the GHG-free large hydro and nuclear allocations from PG&E, at a potential benefit of $0.25 million and $0.4 million respectively. As the analysis previously presented to the CAC and Board indicates, these savings are speculative and would only be realized if a market exists in which to realistically sell these characteristics.
        - ***CAC Feedback – Assessment****: Support for hydro only.* ***Relative Priority:*** *highest (for hydro only).*
        - ***Staff – Assessment: Support for hydro only.*** *Relative Priority: highest (for hydro only).*

    b. Seek additional reductions in operating expense beyond those already captured. Although VCE has already crafted an operating budget that is lower than the current FY 2020 Budget, staff could present a set of more austere measures that could result in additional incremental operational expense savings. The scale of these measures would represent the smallest potential savings of the mitigation options outlined in this report.
        - ***CAC Feedback – Assessment****: Expressed general concern that reductions in operating expenses beyond current levels would limit organizational capacity.* ***Relative Priority:*** *low.*
        - ***Staff – Assessment:*** *Current operational expenses are below previous fiscal year budget**.** Relative Priority: N/A.*

Note: in addition to the above policy options, VCE may consider joint ventures with other CCA's as a strategy to reduce cost per customer served. Staff considers this a long-term prospect requiring additional analysis and discussion with potential partners.

**CONCLUSION**
Staff is seeking feedback and direction from the Board on these sets of policy options. Based on this feedback and continuing analysis, staff will bring back a package of policy recommendations for consideration by the Board as part of its June action on the FY 2020/21 budget.

**ATTACHMENT**
1. Potential Policy Options – Table

**ATTACHMENT 1 - Potential Policy Options Table**

| Policy | Potential Savings | Ease of Implementation | Timing | Notes/Other Considerations | Relative Priority |
|---|---|---|---|---|---|
| Rate Change – Rate Increase | $800,000 to $2.4 million | Medium-high difficulty due to outreach efforts and opt-out risk | Could start shortly after BOD approval and start seeing immediate revenue impact | Revenue increase is $800K per 1% change – assume 1-3% target for Potential Savings | CAC – Infeasible<br><br>Staff - Lowest |
| Rate Change – Additional Rate Class | $0.25 to $1.5 million | Medium to high difficulty due to complexity of the roll-out and communication efforts | Could start shortly after BOD approval and start seeing immediate revenue impact | One example scenario could assume ag rates slightly below PG&E gen rate; commercial at PG&E rate; and residential slightly above PG&E rate. Other scenarios possible | CAC – Low/ Moderate<br><br>Staff - Moderate |
| Power Resource Planning Adjustment | $0 to $3.1 million | Low end of the range less difficult | Throughout fiscal year '21 – '22 | Power Content Label impacts; Will require BOD approval | CAC – Highest<br><br>Staff - Highest |
| GHG Free – Large Hydro | $0 to $240,000 | Low end of the range less difficult | Q3-Q4 2020 | Volume is unknown; market interest/ability to resell may be low | CAC – Highest<br><br>Staff - Highest |
| GHG Free – Nuclear | $0 to $420,000 | Low end of the range less difficult | Q3-Q4 2020 | Volume is unknown; market interest/ability to resell may be low; reputational risk | CAC – Lowest<br><br>Staff - Lowest |
| Operations Reductions | $25,000 to $100,000 | Low end of range less difficult; high end of range difficult | Impact spread throughout FY 2021 budget | Significant strategic trade-offs between program effectiveness and marginal cost savings | CAC – Lowest<br><br>Staff – N/A |

Notes:
1. Policies not listed in priority order.
2. Combination of policies possible.
3. CAC Relative Priority based on Staff summary of CAC discussion.

**VCE PRELIMINARY OPERATING BUDGET**

| | APPROVED BUDGET FY 2019-2020 | ACTUAL YTD MAR 31, 2020 (9 MO) + FORECAST (3 MO) FY 2019-2020 | PRELIMINARY BUDGET FY 2020-2021 |
|---|---|---|---|
| OPERATING REVENUE | $ 55,708 | $ 54,941 | $ 49,513 |
| OPERATING EXPENSES: | | | |
| Cost of Electricity | 41,575 | 41,004 | 49,920 |
| Contract Services | 2,910 | 2,890 | 2,982 |
| Staff Compensation | 1,183 | 1,069 | 1,118 |
| General, Administration and other | 728 | 527 | 771 |
| TOTAL OPERATING EXPENSES | 46,396 | 45,491 | 54,790 |
| TOTAL OPERATING INCOME | 9,312 | 9,450 | (5,277) |
| NONOPERATING REVENUES (EXPENSES) | | | |
| Interest income | 132 | 108 | 135 |
| Interest expense | (155) | (117) | (57) |
| TOTAL NONOPERATING REV/(EXPENSES) | (23) | (9) | 78 |
| NET MARGIN | $ 9,289 | $ 9,441 | $ (5,199) |
| NET MARGIN % | 16.7% | 17.2% | -10.5% |