



**Special Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, June 11, 2020 at 4:00 p.m.
Via Teleconference**

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/84816664913>
Meeting ID: 848 1666 4913

b. By phone

One tap mobile
+16699009128,,84816664913# US
+13462487799,,84816664913# US

Dial:
+1 669 900 9128 US
+1 346 248 7799 US
Meeting ID: 848 1666 4913

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 May 14, 2020 Board Meeting Minutes.**
5. **Receive 2020 Long Range Calendar.**
6. **Receive Financial Update – April 30, 2020 (unaudited) financial statement.**
7. **Receive June 2020 Legislative Update and approve support of:**
 - a. **SB 862**
 - b. **SB 1117**
 - c. **SB 1312**
8. **Receive June 3, 2020 Regulatory Update provided by Keyes & Fox.**
9. **Receive June 2, 2020 Customer Enrollment Update.**
10. **Receive Community Advisory Committee May 28, 2020 Meeting Summary.**
11. **Approve extension of VCE opt-out fee waiver for one additional year until July 1, 2021.**
12. **Approve Memorandum of Understanding (MOU) between City of Davis and VCE to implement the Sacramento Area Council of Governments Electric Vehicle Charging Infrastructure Grant.**
13. **Approve Amendment #17 to Task Order #4 (extension of Director of Finance and Internal Operations role) to Sacramento Municipal Utility District Professional Services Agreement.**
14. **Approve one-year contract extension with Keyes & Fox to provide regulatory legal counsel to VCE until July 2021.**
15. **Approve one-year contract extension with Pacific Policy Group to provide lobbying services to VCE until July 2021.**
16. **Consideration of Reappointment/Appointment of Community Advisory Committee Members. (Action)**

REGULAR AGENDA

17. **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)**

18. **Approve policy strategies to plan for incorporation of long-term renewable contracts into VCE's power portfolio and to address fiscal year 2020/21 Power Charge Indifference Adjustment (PCIA) and Resource Adequacy cost impacts. (Action)**
19. **Approve Fiscal Year 2020-2021 Operating Budget. (Action)**
20. **Update on request for offers for local renewable projects and Incremental Resource Adequacy. (Informational)**
21. **Approve Net Energy Metering Donation Pilot Program. (Action)**
22. **Status update and next steps on the potential acquisition of PG&E's local electricity distribution system. (Informational)**
23. **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.

24. 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.

25. Adjournment: The next VCE Board meeting is scheduled for Thursday, July 9, 2020 at 5:30 p.m. currently at the City of Woodland, located at 300 1st street, Woodland, CA 95695; however, this meeting may be held via teleconference.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS SPECIAL MEETING ON THURSDAY, JUNE 11, 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.

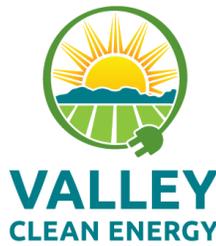
VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 4

TO: Valley Clean Energy Alliance Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from May 14, 2020 Special Board Meeting
DATE: June 11, 2020

RECOMMENDATION

Receive, review and approve the attached Minutes from the May 14, 2020 Special Board meeting.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS SPECIAL MEETING
THURSDAY, MAY 14, 2020**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their special meeting scheduled for Thursday, May 14, 2020 at 4:00 p.m. via teleconference. Chairperson Don Saylor established that there was a quorum present, began the meeting at 4:01 p.m., and announced that this meeting was being recorded.

Board Members Present: Don Saylor, Dan Carson, Tom Stallard, Wade Cowan, Gary Sandy, Lucas Frerichs, Angel Barajas, Jesse Loren

Associate Members Present: Beverly Sandeen, Christopher Cabaldon

Members Absent: None

Associate Members Absent: None

Approval of Agenda VCE Interim General Manager Mitch Sears informed the Board that regular agenda item 13 – Rugged Power Purchase Agreement is tabled until the June 11th Board meeting. Motion made by Director Stallard to approve the May 14, 2020 agenda with item 13 removed from the agenda, seconded by Director Sandy. Motion passed.

Public Comment Chairperson Saylor opened the floor for public comment on items not listed on today's agenda. Public comments are summarized below.

Charlene Henwood provided a verbal comment on VCE's involvement between the City of Davis and a developer of a potential solar power facility on a site located next to the Yolo County landfill. The way the potential opportunity was handled was a missed opportunity by VCE and should be looked into.

Matt Williams provided a verbal comment about how the City of Davis and VCE missed an opportunity to have low cost, clean, low carbon power, controlled locally. Instead, the City signed an agreement with BrightNight.



Alan Pryor provided a verbal comment asking that the Board investigate VCE's role in facilitating the introduction of BrightNight to the City of Davis and VCE disclosing to BrightNight that VCE was preparing for a future request for offer. This information was not disclosed to any other solar providers. He asks that the Board establish procedures for VCE staff to follow should any future unsolicited introductions be received.

Scott Steward Rex provided a verbal comment regarding the lease agreement that was entered into between City of Davis and BrightNight in March 24, 2020. He feels that this agreement may tinge VCE's reputation and has caused concern to the public and ratepayers. It is suggested that if BrightNight submits an application to VCE in response to the RFO, that the Board direct staff to ask BrightNight to go back to Davis to renegotiate their lease with the City in such a way that it is public and verified.

Yvonne Hunter provided a verbal comment on the (BrightNight) comments tonight and what has been written in the press about the lease agreement between the City of Davis and BrightNight. She thought it was ironic that those who have criticized Davis with a sole source and those that also want VCE to do a sole source agreement with BrightNight. People cannot have it both ways. She commented that VCE's request for offers were developed over a number of months with input from the Community Advisory Committee. She stated that she has complete faith and trust in the VCE staff and the Board to evaluate everything. She does not think that it is VCE's role to direct the City of Davis.

Kevin Scott provided a verbal comment about the BrightNight deal and the bid to VCE. He thinks that the City of Davis should renegotiate its lease agreement with BrightNight and to make the process transparent. He recommended that the City review the recommendations by the Davis Utility Commission. When that process is complete and after review by the citizens, then should VCE consider any BrightNight bids.

Lucia Kaiser provided a verbal public comment echoing what has been said earlier. She stated that the process that BrightNight used has not been adequate. She is asking that VCE staff direct BrightNight to go back to the City to negotiate a deal that is fair and transparent.

No other verbal comments. There were no written comments received. VCE Interim General Manager Mitch Sears had a general comment on this topic. VCE has a request for offer (RFO) out and has been receiving



interest. The origin dates back more than a year and goes back to the beginning of VCE's establishment when the Board adopted VCE's mission and vision that directed interest in procurement of local renewable sources.

Approval of
Consent Agenda

Chair Saylor asked if there were any items the Board wished to pull from the consent agenda or if there were any changes. There being none, a motion was made by Director Frerichs to approve the consent agenda, seconded by Director Carson. There was not public comment on the consent agenda.

Motion passed unanimously. The following items were approved and/or received:

4. April 9, 2020 special Board meeting Minutes;
5. 2020 Long Range Calendar;
6. Financial Updated – March 31, 2020 (unaudited) financial statement;
7. May 6, 2020 Regulatory update from Keyes & Fox;
8. Legislative Update;
9. May 6, 2020 Customer 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; and
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.

Item 13: PPA –
Rugged Solar

This item was tabled to the Board's June meeting.

Item 14: Update
on PG&E's
commercial and
agriculture rates
(TOU rates)
(Informational)

VCE Staff Jim Parks informed those present that the Board and Staff have been approached by the public about agriculture rates. Mr. Parks provided a high level overview on where the rates are going. He informed those present that Pacific Gas & Electric (PG&E) is changing time of use (TOU) rates for all commercial and agricultural customers becoming mandatory for eligible customers in March 2021. He provided a comparison chart showing PG&E's current plan and the new plan. He informed those present that VCE matches PGE rates and VCE is currently



offering the new rates to customers. There were no questions from the Board and no public comments.

Item 15: Receive Analysis on PG&E's offer to allocate GHG-free attributes to CCAs and approve recommendation

VCE Staff Gordon Samuel reviewed the background on this item and provided an update on PG&E's proposal offer to allocate GHG-free attributes (large hydro and nuclear). He informed those present that on May 7, 2020 the California Public Utilities Commission (CPUC) approved PG&E's advice letter of this offering. Mr. Samuel reviewed the potential savings for VCE and considerations of each scenario. A discussion occurred about what decisions have other Community Choice Aggregates (CCAs) made on this proposal. Mr. Samuel reported that the decisions have varied, many have chosen both attributes, some large hydro only. Mr. Sears added that a slight majority of CCAs are not taking nuclear attributes.

It was also discussed the Board's decision could be a risk to VCE's reputation and budget, efforts to bring back those who have opted out of VCE to help with the budget, and, what other CCAs are doing with the revenue by enhancing programs and marketing efforts.

Chair Saylor asked if there was public comment. Written public comment was received by Mr. Richard McCann dated May 8, 2020, who was present at this meeting. Mr. McCann's written public comment, subsequent dialogue, and additional information was posted to the VCE website. Chair Saylor asked if Mr. McCann wanted to summarize his written comment. Mr. McCann did not since his written comments were summarized by VCE staff during the slide presentation on this item.

Christine Shewmaker provided a public comment reminding the Board that the Community Advisory Committee reviewed PG&E's offer at their February 2020 meeting. She voted to not take any attributes as she questions PG&E's motives and she is concerned about reputational risks.

There were no other public comments.

Director Frerich's made a motion to accept Staff's recommendation of accepting only the large hydro allocations; allow Interim General Manager to sign an agreement with PG&E for the GHG-free allocations; and, to revisit this topic as the CalCCA Power Charge Indifference Adjustment (PCIA) Working Group 3 finalizes the approval for 2021 and beyond, seconded by Director Loren. Motion passed by the following vote:



AYES: Saylor, Carson, Stallard, Cowan, Frerichs, Barajas, Sandy, Loren
NOES: None
ABSENT: None
ABSTAIN: None

Item 16; Update on Fiscal Year 20-21 preliminary Operating Budget, Load Forecast, and potential policy options to address possible future fiscal impacts related to COVID-19 and State regulatory actions (Informational)

Mr. Sears introduced this item and reminded the Board that VCE staff are not looking for a recommendation. A recommendation will be asked of the Board at their June meeting when the Board needs to adopt the fiscal year 2020-2021 Operating budget.

VCE Staff Jennifer Archuleta reviewed COVID and recession impacts by covering information on California's reopening roadmap, rate class contribution to VCE's load, different scenarios, and a scenario comparison chart.

VCE Staff George Vaughn provided an overview of the preliminary budget, including PCIA and generation rate, power costs/mix, impacts of COVID and recession, key assumptions, and budget scenarios. A discussion occurred on: projected deficits, amount available to VCE in their line of credit with River City Bank, the effects of PCIA on the budget, renewable resource contracts, and price of market power.

Mr. Sears reviewed the background of potential policy strategies. He also reviewed several options, which include CAC's feedback/assessment and Staff's assessment:

- Option A – increase combined generation rates;
- Option B – implement a third customer rate choice;
- Option C – power resource planning adjustments;
- Option D/E – accept the GHG-free large hydro and nuclear allocations.

Mr. Sears reiterated to the Board that options can be implemented individually or in combination.

Discussion on several topics occurred: Option B - social equity associated with this option and was this option explored by other CCAs; how COVID will affect communities differently; and, CARE and FERA programs.

Mr. Sears informed the Board that Staff will be looking for direction from the Board at the June meeting, which will be part of the operating budget discussion.



Comments were provided by the Board: generation rate tiers warrant further study; the importance of hitting hard with a campaign to return those customers that have opted out; and other ideas to explore: 1) PCIA lump sum to pay out through 2024 and 2) working with CalCCA or lobbyist at the legislative level. Other opinions were expressed: it is hard to decline attributes, such as nuclear GHG, which VCE has already paid for; rate increase would not be good for VCE; possibility of appealing the CPUC's decision on PCIA; and, pursuing CARES act monies.

Mr. Sears thanked the Board for their input and comments. He will come back with recommendations for consideration at the Board's next meeting. He also mentioned that Staff will ask that the CAC provide feedback.

There were no written or verbal comments.

Item 17: Status update and next steps on the potential acquisition of PG&E's local electricity distribution system (Informational)

Mr. Sears provided an update on the two proceedings ongoing at the CPUC 1) directly relates to PG&E bankruptcy reorganization and 2) Order Instituting Investigation (O.I.I.). VCE submitted comments in the first proceeding reflecting the Board's comments and VCE will be submitting comments to the O.I.I. proceeding.

Board Member and Staff Announcements

Mr. Sears informed those present that VCE Staff Tessa Tobar has been helping with the website and social media design. He provided some information about the increase in visits/views to VCE's website as a direct result of her efforts.

Mr. Sears reported that in 2018, VCE exceeded renewable portfolio standards above VCE's 42% goal, and in 2019 VCE is above 42%. VCE is also above in GHG savings.

Two request for offers (RFO) for renewables are being advertised currently – one RFO is a joint effort with Redwood Coast for energy storage for resource adequacy.

Lastly, Mr. Sears informed those present that a contract for electric



vehicle (EV) charging station located in the City of Winters as a part of the SACOG grant is ready to be signed.

Public Comment on Closed Session Items Chairperson Saylor announced that the Board will be going into Closed Session and that it is anticipated that no reportable action will be taken in Closed Session.

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 5:56 p.m. to go into Closed Session.

CLOSED SESSION: Conference with Legal Counsel – Anticipated Litigation The Board began Closed Session at 5: 58 p.m. and adjourned their Closed Session at 6:04 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

TO: VCEA Board
FROM: Alisa Lembke, Board Clerk/Administrative Analyst
SUBJECT: Community Advisory Committee 2020 Long-Range Calendar
DATE: June 11, 2020

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 • Update on Regulatory Assistance Project	• Informational • Informational
March 12, 2020	Board WOODLAND	• Preliminary FY20/21 Operating Budget (Regular) • GHG-free attributes • Local/Regional Renewable RFO solicitation	• Review • Action • Informational
Monday, March 23, 2020 Special Board Meeting / Strategic Planning CANCELLED	Board WOODLAND Community & Senior Center, Meeting Room #3	• Strategic Plan • 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 • River City Bank Revolving Line of Credit • Power Purchase Agreement	• Action • Action • Action

April 23, 2020 Via Teleconference	Advisory Committee DAVIS	<ul style="list-style-type: none"> Review Task Groups' projects/tasks "charge" for 2020 	<ul style="list-style-type: none"> Action
May 14, 2020 Via Teleconference	Board WINTERS	<ul style="list-style-type: none"> PPA - YCFCWCD Greenhouse Gas (GHG)-free attributes Update on FY20/21 Operating Budget 	<ul style="list-style-type: none"> Approval Action Informational
May 28, 2020 Via Teleconference IRP Workshop	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Integrated Resource Plan (IRP) Public Workshop, CAC to provide recommendation 	<ul style="list-style-type: none"> Information / Discussion
June 11, 2020	Board DAVIS	<ul style="list-style-type: none"> Final Approval of FY20/21 Operating Budget Extension of Waiver of Opt-Out Fees for one more year Re/Appointment of Members to Community Advisory Committee and Appoint City of Winters seats to CAC SMUD Amendment to Contract re: VCE Collections Policy Update on Integrated Resource Plan Public Workshop 	<ul style="list-style-type: none"> Approval Action Action Action Informational
June 25, 2020	Advisory Committee DAVIS	<ul style="list-style-type: none"> Update on the Integrated Resource Plan (IRP) 	<ul style="list-style-type: none"> Information
July 9, 2020	Board WOODLAND	<ul style="list-style-type: none"> Draft Integrated Resource Plan and CAC Recommendation (IRP due 9/1/20) 	<ul style="list-style-type: none"> Discussion
July 23, 2020	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Information related to 2021 Integrated Resource Plan Update 	<ul style="list-style-type: none"> Discussion
August 13, 2020	Board DAVIS	<ul style="list-style-type: none"> Adoption of Integrated Resource Plan (due September 1, 2020) 	<ul style="list-style-type: none"> Action
August 27, 2020	Advisory Committee DAVIS	<ul style="list-style-type: none"> Revised Procurement Guide – Review 	<ul style="list-style-type: none"> Discussion
September 10, 2020	Board	<ul style="list-style-type: none"> Residential Time of Use Rate Classes Report 	<ul style="list-style-type: none"> Information/Discussion

	WOODLAND	<ul style="list-style-type: none"> • Discussion on River City Bank Revolving Line of Credit 	<ul style="list-style-type: none"> • Discussion
September 24, 2020	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Revised Procurement Guide – Review Draft Recommendation 	<ul style="list-style-type: none"> • Discussion • Discussion
October 8, 2020	Board WINTERS	<ul style="list-style-type: none"> • Approval of FY19/20 Audited Financial Statements (James Marta & Co.) • River City Bank Revolving Line of Credit 	<ul style="list-style-type: none"> • Action • Discussion/Action
October 22, 2020	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Revised Procurement Guide- Review Draft Recommendation 	<ul style="list-style-type: none"> • Discussion • Discussion
November 12, 2020	Board WOODLAND	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
November 26, 2020 Thanksgiving Holiday – Rescheduled to 3 rd Thursday, November 19, 2020	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Revised Procurement Guide – Finalize Recommendation to Board 	<ul style="list-style-type: none"> • Discussion • Action: Recommendation to Board
December 10, 2020	Board DAVIS	<ul style="list-style-type: none"> • Election of Officers for 2020 	<ul style="list-style-type: none"> • Nominations
December 24, 2020 Rescheduled to 3 rd Thursday, December 17, 2020	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Election of Officers for 2020 • Finalization of Committee Calendar Year End Report 	<ul style="list-style-type: none"> • Nominations • Approve Report
January 14, 2021	Board WOODLAND	<ul style="list-style-type: none"> • Receive CAC Calendar Year End Report • Approve Revised Procurement Guide 	<ul style="list-style-type: none"> • Receive Report • Action
January 28, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Review and Discuss Task Groups 	<ul style="list-style-type: none"> • Discuss/Action

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

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Valley Clean Energy Alliance Board of Directors

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

SUBJECT: Financial Update – April 30, 2020 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending April 30, 2020

DATE: June 11, 2020

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of April 1, 2020 to April 30, 2020 (with comparative year to date information) and Actual vs. Budget year to date ending April 30, 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 April 30, 2020.

Financial Statements for the period April 1, 2020 – April 30, 2020

In the Statement of Net Position, VCEA as of April 30, 2020 has a total of \$12,427,018 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account and \$1,167,188 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and SMUD and owes as of April 30, 2020 \$133,829 and \$322,211 respectively for a grand total of \$456,040. 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 \$1,416,571 as of April 30, 2020, for a total of \$1,811,893. On April 30, 2020, VCE's net position is \$12,997,940.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$3,072,572 of revenue (net of allowance for doubtful accounts) of which \$3,434,773 was billed in April and (\$266,456) represent estimated unbilled revenue. The cost of the electricity for the April revenue totaled \$2,902,458. For April, VCEA's gross margin is approximately 6% and operating income totaled (\$169,690). The year-to-date change in net position was \$5,669,107.

In the Statement of Cash Flows, VCEA cash flows from operations was \$221,247 due to April cash receipts of revenues being higher than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending April 30, 2020

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

- Salaries & Wages/Benefits - (\$170,288) and (33%) – 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 - (\$70,950) and (15%) – 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 - (\$103,107) and (38%) – variance is mainly due to SMUD not having yet billed for the IRP update included in the budget.
- Legal - (\$63,554) and (45%) – variance is due to lower than planned general legal support from member agencies and outside counsel.
- PG&E Acquisition Consulting - \$176,380 and 100% - variance is due to PG&E asset acquisition expenses not having been applicable at the time the budget was constructed.
- Marketing Collateral - \$62,280 and 33% - 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
- New Member Expenses - (\$50,000) and (100%) – this amount was budgeted as a placeholder for expenses related to bringing new member jurisdictions into VCE. To date, any spending in these areas has been incorporated into other budget line items, such as SMUD and marketing-related line items.

- Contingency - (\$191,907) and (100%) - variance is due to VCE not having required usage of contingency funds to date; this is offset by \$176,380 of PG&E acquisition-related expenses.

Attachments:

1. Financial Statements (Unaudited) April 1, 2020 to April 30, 2020 (with comparative year to date information.)
2. Actual vs. Budget for year to date ending April 30, 2020



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF APRIL 1 TO APRIL 30, 2020

PREPARED ON MAY 30, 2020

VALLEY CLEAN ENERGY ALLIANCE

STATEMENT OF NET POSITION

April 30, 2020

(UNAUDITED)

ASSETS

Cash and cash equivalents	\$	12,427,018
Accounts receivable, net of allowance		3,350,223
Accrued revenue		1,461,574
Prepaid expenses		19,410
Inventory - Renewable Energy Credits		
Other current assets and deposits		2,540
Total current assets		<u>17,260,765</u>
Restricted assets:		
Debt service reserve fund		1,100,000
Power purchase reserve fund		1,167,188
Total restricted assets		<u>2,267,188</u>
Noncurrent assets:		
Other noncurrent assets and deposits		100,000
Total noncurrent assets		<u>100,000</u>
TOTAL ASSETS	\$	<u>19,627,953</u>

LIABILITIES

Current liabilities:		
Accounts payable	\$	595,721
Accrued payroll		8,597
Interest payable		6,149
Due to member agencies		133,829
Accrued cost of electricity		2,887,951
Other accrued liabilities		609,955
Security deposits - energy supplies		515,640
User taxes and energy surcharges		60,278
Current Portion of LT Debt		395,322
Total current liabilities		<u>5,213,442</u>
Noncurrent liabilities		
Term Loan- RCB		1,416,571
Total noncurrent liabilities		<u>1,416,571</u>
TOTAL LIABILITIES	\$	<u>6,630,013</u>

NET POSITION

Restricted		
Local Programs Reserve		136,898
Restricted		2,267,188
Unrestricted		10,593,854
TOTAL NET POSITION	\$	<u>12,997,940</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF APRIL 1, 2020 TO APRIL 30, 2020
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING APRIL 30, 2020	YEAR TO DATE
OPERATING REVENUE		
Electricity sales, net	\$ 3,072,572	\$ 43,544,952
TOTAL OPERATING REVENUES	3,072,572	43,544,952
OPERATING EXPENSES		
Cost of electricity	2,902,458	34,179,214
Contract services	186,554	2,430,399
Staff compensation	94,944	867,436
General, administration, and other	58,306	392,288
TOTAL OPERATING EXPENSES	3,242,262	37,869,337
TOTAL OPERATING INCOME (LOSS)	(169,690)	5,675,615
NONOPERATING REVENUES (EXPENSES)		
Interest income	9,478	80,475
Interest and related expenses	(6,035)	(86,983)
TOTAL NONOPERATING REVENUES (EXPENSES)	3,443	(6,508)
CHANGE IN NET POSITION	(166,247)	5,669,107
Net position at beginning of period	13,164,187	7,328,833
Net position at end of period	\$ 12,997,940	\$ 12,997,940

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF APRIL 1 TO APRIL 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING APRIL 30, 2020	YEAR TO DATE
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 3,203,813	\$ 48,026,971
Receipts for security deposits with energy suppliers	-	515,640
Payments to purchase electricity	(2,509,391)	(36,294,751)
Payments for contract services, general, and administration	(378,143)	(3,583,679)
Payments for staff compensation	(95,032)	(862,628)
Net cash provided (used) by operating activities	221,247	7,801,553
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Loans from member agencies		(1,500,000)
Principal payments of Debt	(32,943)	(164,717)
Interest and related expenses	(6,316)	(193,146)
Net cash provided (used) by non-capital financing activities	(39,259)	(1,857,863)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	9,478	80,475
Net cash provided (used) by investing activities	9,478	80,475
NET CHANGE IN CASH AND CASH EQUIVALENTS		
Cash and cash equivalents at beginning of period	14,502,740	8,670,041
Cash and cash equivalents at end of period	\$ 14,694,206	\$ 14,694,206
Cash and cash equivalents included in:		
Cash and cash equivalents	12,427,018	12,427,018
Restricted assets	2,267,188	2,267,188
Cash and cash equivalents at end of period	\$ 14,694,206	\$ 14,694,206

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF APRIL 1 TO APRIL 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING APRIL 30, 2020</u>	<u>YEAR TO DATE</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	\$ (169,690)	\$ 5,675,615
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
(Increase) decrease in net accounts receivable	(149,833.00)	1,645,050.00
(Increase) decrease in accrued revenue	267,539	2,834,139.00
(Increase) decrease in prepaid expenses	(17,952)	(19,410.00)
(Increase) decrease in inventory - renewable energy credits	-	207,168.00
Increase (decrease) in accounts payable	(108,321)	9,601.00
Increase (decrease) in accrued payroll	(88)	4,808.00
Increase (decrease) in due to member agencies	14,939	(276,480.00)
Increase (decrease) in accrued cost of electricity	393,067	(2,322,705.00)
Increase (decrease) in other accrued liabilities	(21,949)	(474,703.00)
Increase (decrease) security deposits with energy suppliers	-	515,640.00
Increase (decrease) in user taxes and energy surcharges	13,535	2,830.00
Net cash provided (used) by operating activities	<u>\$ 221,247</u>	<u>\$ 7,801,553</u>

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2020
FOR THE YEAR TO DATE ENDING 04-30-20

Description	4/30/2020	4/30/2020	YTD Variance	% over/-under
	YTD FY2020 Actuals	YTD FY2020 Budget		
Electric Revenue	\$ 43,544,950	\$ 44,130,872	\$ (585,922)	-1%
Interest Revenues	80,474	107,185	(26,711)	-25%
Purchased Power	34,179,215	33,910,337	268,877	1%
Labor & Benefits	867,439	985,233	(117,795)	-12%
Salaries & Wages/Benefits	339,860	510,148	(170,288)	-33%
Contract Labor	494,316	464,585	29,731	6%
Human Resources & Payroll	33,263	10,500	22,763	217%
Office Supplies & Other Expenses	110,733	106,584	4,149	4%
Technology Costs	9,684	7,720	1,964	25%
Office Supplies	4,075	1,030	3,045	296%
Travel	4,449	4,000	449	11%
CalCCA Dues	90,800	90,833	(33)	0%
Memberships	1,725	3,000	(1,275)	-43%
Contractual Services	2,430,349	2,448,073	(17,724)	-1%
Don Dame	12,278	15,000	(2,723)	-18%
SMUD - Credit Support	418,160	489,110	(70,950)	-15%
SMUD - Wholesale Energy Services	470,120	470,120	-	0%
SMUD - Call Center	553,263	566,957	(13,695)	-2%
SMUD - Operating Services	166,893	270,000	(103,107)	-38%
Legal	76,446	140,000	(63,554)	-45%
Regulatory Counsel	140,876	154,400	(13,524)	-9%
Joint Regulatory	38,420	25,000	13,420	54%
Legislative	50,000	50,000	-	0%
Accounting Services	13,249	20,000	(6,751)	-34%
Audit Fees	63,000	58,500	4,500	8%
PG&E Acquisition Consulting	176,380	-	176,380	100%
Marketing Collateral	251,266	188,986	62,280	33%
Rents & Leases	15,933	14,677	1,256	9%
Hunt Boyer Mansion	15,933	14,677	1,256	9%
Other A&G	236,167	278,467	(42,300)	-15%
PG&E Data Fees	212,457	216,335	(3,878)	-2%
Community Engagement Activities & Sponsorships	2,826	5,000	(2,174)	-43%
Insurance	4,385	6,132	(1,747)	-28%
New Member Expenses	-	50,000	(50,000)	-100%
Banking Fees	16,500	1,000	15,500	1550%
Miscellaneous Operating Expenses	29,499	5,110	24,389	477%
Contingency	-	191,907	(191,907)	-100%
TOTAL OPERATING EXPENSES	\$ 37,869,335	\$ 37,940,388	\$ (71,053)	0%
Interest Expense - Munis	14,965	46,384	(31,419)	-68%
Interest on RCB loan	60,798	71,910	(11,113)	-15%
Interest Expense - SMUD	11,219	12,278	(1,058)	-9%
Miscellaneous Non-Operating	-	-	-	0%
NET INCOME	\$ 5,669,107	\$ 6,167,098	\$ (497,991)	-8%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Receive June 2020 Legislative Update and approve support of SB 862, SB 1117, and SB 1312

Date: June 11, 2020

RECOMMENDATION

1. Support SB 862
2. Support SB 1117
3. Support SB 1312

BACKGROUND AND ANALYSIS

Due to the unscheduled legislative recess and revision of the legislative calendar due to the COVID-19 pandemic, many energy related bills are no longer being pursued in the 2020 legislative session, including both bills CalCCA was sponsoring. However, energy bills related to public safety power shutoffs (PSPS) and community resilience and energy bills related to economic stimulus or cost savings continue to move forward. Staff is recommending support for the three bills; each are summarized below with links to the current bill language.

In the summaries below, staff notes CalCCA's position on the legislation being considered by VCE.

1. SB 862 (Dodd). Planned Power Outage: Public Safety.

Summary: This bill would additionally include a deenergization event within a sudden and severe energy shortage constituting a state of emergency and a local emergency. This bill would require an Investor Owned Utility (IOU) to coordinate with local governments to jointly identify and establish Community Resource Centers (CRC) to provide resources and services during a deenergization event. Once a CRC is established, the IOU will make any necessary electrical upgrades to the facility so that a mobile backup generator can be located at, and provide electricity, the CRC. The IOU must provide a mobile backup generator at the beginning of a deenergization event if the CRC does not have backup generation and the deenergization event is expected to result in loss of power to the CRC.

Recommendation: Staff is recommending support for this bill so that there is better coordination between PG&E and Yolo County and its cities regarding the preparation and implementation of community resource centers during a PSPS event. This is consistent with Board direction regarding policies to ensure PG&E improves its execution of PSPS.

Additional Information:

- CalCCA, several other CCAs, and the association of Counties support the bill
- Next hearing: Senate Appropriations, no date set
- Bill Language: [SB 862](#)

2. SB 1117 (Monning). Master-Meter Customers: Electrical or Gas Service.

Summary: Current law contains various provisions relative to the responsibilities of a gas or electrical corporation and master-meter customer when gas or electrical service is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, including a requirement that the master-meter customer charge each user at the same rate that would be applicable if the user were receiving gas or electricity directly from the gas corporation or electric corporation. This bill would replace “electrical corporation” with “load-serving entity,” defined as including electrical corporations, community choice aggregators, and electric service providers, in many of these provisions relative to the responsibilities of an electrical corporation and master-meter customer when electrical service is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex.

This bill addresses an issue raised by several CCAs in which electrical corporations and other third-party billers are charging submeter accounts in mobile home parks at the electric corporation rate for electricity, even if the park is served by a CCA with a different rate.

Consistent with adopted Board policy relating to time sensitive legislative issues, VCE staff worked with the VCE Board subcommittee to submit a letter supporting SB 1117 on May 12, 2020 for the bill’s hearing in Senate Energy, Utilities and Commerce Committee (SEUC). The SEUC unanimously passed this bill.

Recommendation: Staff recommends the ratification of VCE’s support for this legislation.

Additional Information:

- CalCCA and several other CCAs support the bill
- The bill is pending before the Senate Floor
- Bill Language: [SB 1117](#)

3. SB 1312 (McGuire). Electrical Corporations: Undergrounding of Infrastructure: Deenergization.

Summary: Would require the Public Utilities Commission to revise Electric Tariff Rule 20 to additionally authorize and fund, whenever feasible, the undergrounding of electrical and communication infrastructure within certain commission-designated high fire-threat areas for purposes of wildfire mitigation. The bill would also require the CPUC to develop a standard against which to measure the prudence of an IOU’s execution of a PSPS and an IOU’s fire risk mitigation capital expenditures on the distribution or transmission infrastructure that motivated the PSPS. The bill further requires that IOUs:

- Identify power lines that are more likely to cause PSPS events and harden those lines by July 1, 2025.
- Include details about the lines that causes the PSPS event in IOU after-event reports.

- Harden the IOU's infrastructure that caused the PSPS event and report back to the CPUC on their progress one year after the shutoff event.

Consistent with adopted Board policy relating to time sensitive legislative issues, VCE staff worked with the VCE Board subcommittee to submit a letter supporting SB 1312 on May 21, 2020 for the bill's hearing in Senate Energy, Utilities and Commerce Committee (SEUC). The SEUC passed this bill with no "no" votes.

Recommendation: Staff recommends the ratification of VCE's support for this legislation.

Additional Information:

- Several other CCAs support the bill
- Next hearing: Senate Appropriations, no date set
- Bill Language: [SB 1312](#)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: June 11, 2020

Please find attached Keyes & Fox's May 2020 Regulatory Memorandum dated June 3, 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 June 3, 2020

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance (“VCE”) Board of Directors

From: Sheridan Pauker, Partner, Keyes & Fox, LLP
Tim Lindl, Partner, Keyes & Fox LLP
Ben Inskeep, Principal Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: June 3, 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 CPUC unanimously approved D.20-05-053 approving PG&E’s reorganization plan and establishing additional management, operational, and oversight requirements applicable to PG&E.
- **Investigation into PG&E Violations Related to Wildfires:** The CPUC issued D.20-05-019, approving Commissioner Rechtschaffen’s “Decision Different” regarding the penalties and other remedies to be imposed on PG&E for 2017/2018 wildfires.
- **2020 IRP Rulemaking:** The CPUC issued an Order Instituting Rulemaking (OIR) establishing a successor rulemaking to the 2016 IRP proceeding and requesting comments on the preliminary scope.
- **2016 IRP Rulemaking:** Energy Division provided final IRP templates to be used by LSEs in their 2020 IRPs. CalCCA filed a Petition for Modification of D.19-11-016, requesting clarification of hybrid and energy storage resource Qualifying Capacity for complying with the decision and modification of the cost recovery mechanism. PG&E filed an advice letter requesting approval of energy storage contracts totaling 423 MW/1,692 MWh pursuant to D.19-11-016. The ALJ issued a Ruling making several corrections to a previous Ruling that established final LSE load forecasts for use by LSEs in creating their IRPs.
- **RA Rulemaking (2019-2020):** CalCCA and numerous other stakeholders submitted a joint letter expressing deep concerns with and recommending changes to the RA central procurement Proposed Decision. The CPUC held the Proposed Decision until its June 11, 2020, Meeting. The ALJ issued a Proposed Decision on the limited rehearing of D.20-03-016 and Track 1 RA import issues.
- **RA Rulemaking (2021-2022):** Parties filed comments and reply comments on the final CAISO local capacity requirements report. CAISO issued its final 2021 flexible capacity requirements

report, on which parties submitted comments. The ALJ issued a Proposed Decision adopting local capacity obligations for 2021-2023, adopting flexible capacity obligations for 2021, and making changes to the RA program. Notably, among other changes to the “Maximum Cumulative Capacity” bucket system, the PD would adopt a new requirement that would limit the use of in-front-of-the-meter wind and solar resources, DR resources, and other non-dispatchable resources to 43.9% of an LSE’s RA capacity, with the remainder required to come from 24-hour dispatchable resources.

- **PCIA Rulemaking:** The ALJ issued a Proposed Decision rejecting a Joint Petition for Modification of D.18-07-009 filed by California Choice Energy Authority and the Center for Accessible Technology in October 2018 regarding medical baseline customers in SDG&E and SCE service territories.
- **PG&E’s 2019 ERRA Compliance:** A prehearing conference was held, with parties now awaiting a scoping memo and ruling.
- **RPS Rulemaking:** The Assigned Commissioner and ALJ issued a Ruling establishing requirements for retail seller 2020 RPS Procurement Plans, followed by an Email Ruling that partially granted a request for an extension of time to June 29, 2020, for retail sellers to file their RPS Procurement Plan. On May 18, 2020, the Energy Division requested informal comments on draft 2019 RPS Compliance Report templates.
- **PG&E’s Phase 1 GRC:** PG&E responded to an ALJ Ruling directing parties to the Settlement Agreement to provide updated versions of the appendices to the Settlement Agreement to reflect PG&E’s 2018 recorded (as opposed to forecasted) capital expenditures.
- **PG&E’s Phase 2 GRC:** Parties filed opening and reply comments, respectively, on the IOUs’ Final Essential Usage Study (EUS) Plan proposal. PG&E served updated testimony.
- **Investigation into PG&E’s Organization, Culture and Governance:** The ALJ emailed the service list and signaled that a ruling is forthcoming that will invite party comment on the scope, schedule and priorities for this proceeding.
- **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.)
- **Wildfire Fund Non-Bypassable Charge (AB 1054):** No updates this month.
- **Other Regulatory Developments:**
 - **CPUC Approves Proposed Decision on De-Energization:** The CPUC adopted a [Proposed Decision](#) on revised guidelines governing PSPS, or "de-energization" events at its May 28 business meeting.
 - **Clean Power Alliance Appeals CPUC Citation for RA:** Clean Power Alliance (CPA) [appealed](#) a citation issued by the Consumer Protection and Enforcement Division (CPED) regarding CPA’s Year-Ahead Resource Adequacy compliance filing for the 2020 RA year.
 - **California Energy Commission issues Final 2019 Integrated Energy Policy Report:** The CEC issued the [Final 2019 IEPR](#). The IEPR is a lengthy report covering numerous aspects of California’s energy system and the various policies that affect the energy sector.

Investigation of PG&E Bankruptcy Plan

Parties filed comments and reply comments on the Proposed Decision on May 11, 2020, and May 18, 2020, respectively. At its May 28, 2020, meeting, the CPUC unanimously approved the revised Proposed Decision (D.20-05-053, issued June 1, 2020) approving PG&E's reorganization plan and establishing additional management, operational, and oversight requirements applicable to PG&E.

- **Background:** This case addressed 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 considered the ratemaking implications of the proposed plan and settlement agreement, whether the plan satisfactorily resolves claims for monetary fines or 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. PG&E must secure approval for the plan by the federal Bankruptcy Court.

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 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. VCE is a party to this proceeding.

- **Details:** D.20-05-053 approves the financial elements of PG&E's reorganization plan, including:
 - \$13.5 billion Fire Victim Trust. The reorganization plan also specifies 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.
 - \$11 billion settlement with insurance claim holders and companies.
 - Reinstatement of \$9.575 billion in existing, prepetition PG&E-funded debt claims.
 - Refinancing of \$11.85 billion in existing, prepetition PG&E debt with newly issued debt.
 - Payment in full of general unsecured claims and certain other liabilities, with interest at the legal rate.
 - A \$7.5 billion post-emergence 30-year securitization transaction.

The Decision approves, 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 Decision does 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 Decision also rejected the Joint CCAs' request to revoke PG&E's existing holding company structure. Among other determinations, the Decision:

- Requires 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 is required to file an application for regionalization by June 30, 2020.
- Requires PG&E to have a separate Chief Risk Officer (CRO) and Chief Safety Officer (CSO). It establishes 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.

- Clarifies and expands 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).
 - Provides for the establishment of additional requirements applicable to the boards of directors of PG&E and PG&E Corp., but allows their membership to remain largely the same.
 - Finds that PG&E may not seek cost recovery for 2017/2018 wildfire claims except via the proposed securitization.
 - Declines to adopt a safety-based earnings adjustment mechanism, but it will continue to be considered in the future, either in the PG&E Safety Culture proceeding (I.15-08-019) or another proceeding.
 - Requires 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, 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 Decision provides the CPUC's approval for 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 key aspects of requirements related to regionalization and the independent monitor remain to be determined in the future. The Decision 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.
 - **Next Steps:** The Bankruptcy Court will need to approve the reorganization plan and accompanying CPUC directives by June 30, 2020. PG&E must also file its regional restructuring application by the June 30, 2020. PG&E is directed to file a Tier 2 Advice Letter within 30 days of the Effective Date of its Plan to implement the debt cost savings associated with the \$11.85 billion Noteholder RSA debt. This proceeding is expected to close after June 30, 2020 and remaining issues will be addressed in the PG&E Safety Culture proceeding (I.15-08-019).
 - **Additional Information:** [D.20-05-053](#) (June 1, 2020); [PG&E Motion](#) for official notice and [Plan of Reorganization](#) (March 24, 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); [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

On May 8, 2020, the CPUC issued D.20-05-019, approving Commissioner Rechtschaffen's "Decision Different" regarding the penalties and other remedies to be imposed on PG&E.

- **Background:** The scope of the proceeding included 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 ordered 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 would have resulted in \$1.675 billion in PG&E penalties. Specifically, PG&E would not have been permitted seek rate recovery of wildfire-related expenses and capital expenditures totaling \$1.625 billion. In addition, PG&E would have been required to spend \$50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives.

The Presiding Officer's Decision provided for penalties on PG&E totaling \$2.137 billion. The total included 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.

- **Details:** D.20-05-019 approved with modifications the Settlement Agreement, as provided in Commissioner Rechtschaffen's "Decision Different." It approved penalties totaling \$2.137 billion, however the \$200 million fine payable to the General Fund is permanently suspended, resulting in an effective penalty total of \$1.937 billion. In addition, the decision requires 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. Finally, the decision rejects PG&E's attempt to classify the \$200 million fine as a Fire Victim Claim or Fire Claim.
- **Analysis:** D.20-05-019 results in the largest penalty in CPUC history. It requires 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 were required to 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 does not hinder PG&E's reorganization plan from moving forward, whereas PG&E has argued that provisions in the original Presiding Officer's Decision could have imperiled the plan.
- **Next Steps:** Upon approval of the Settlement Agreement as modified in the decision by the Bankruptcy Court, this proceeding is closed.
- **Additional Information:** [D.20-05-019](#) (May 8, 2020); [Decision Different](#) of Commissioner Rechtschaffen (April 20, 2020); [Motion](#) by Commissioner Rechtschaffen (March 27, 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](#).

2020 IRP Rulemaking

On May 14, 2020, the CPUC issued an Order Instituting Rulemaking (OIR) establishing a successor to the first IRP proceeding (see "2016 IRP Rulemaking" below).

- **Background:** In the CPUC's IRP process, the Reference System Portfolio (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. In the 2016 IRP proceeding, the CPUC issued D.19-11-016, directing VCE to 6.3 MW, 9.4 MW, and 12.6 MW, to be online by line by August 1, 2021, August

1, 2022, and August 1, 2023, respectively. In addition, 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), while also requiring LSEs to file an IRP scenario based on a more aggressive 38 MMT target in their IRPs due September 1, 2020.

- **Details:** The OIR’s preliminary scope defines a Planning Track and a Procurement Track. The Planning Track includes all of the work associated with developing the RSP and the PSP. The individual issues within this track include modeling, scenario selection, inputs and assumptions, GHG benchmarks, load forecasting issues, and filing requirements for individual LSE IRPs. The OIR states that it is now necessary to move beyond planning through 2030 and begin to move the planning horizon through at least 2035 in preparation for the 2045 goals established by SB 100 (e.g., a zero-carbon electricity sector).

The Procurement Track will focus on the evaluation of whether LSE procurements are necessary to protect reliability or achieve statutory goals. This evaluation will take place primarily at the system level, while local reliability issues continue to be addressed in RA proceedings. However, the OIR notes that there is the potential for overlap between the IRP and RA proceedings, such as the potential applicability of a central procurement model to system-level reliability issues. The OIR states that the Procurement Track will also include:

- Consideration of cost allocation issues arising out of procurement directives.
 - Procurement issues associated with long lead-time resources, such as long duration storage, offshore wind, out of state renewables; other resources that add resource diversity, such as geothermal; and resources that may require involvement of multiple LSEs to be viable.
 - The development of new resource types, such as hybrid resources and hydrogen-fueled resources.
 - Consideration of utilities’ bundled procurement plans, including any changes necessary to the currently approved plans.
- **Analysis:** This proceeding impacts VCE’s compliance requirements, including its IRP filing, as well as issues that could impact VCE’s autonomy over its procurement decisions and cost recovery of related procurement directives.
 - **Next Steps:** Comments on the OIR are due June 15, 2020, and replies are due June 30, 2020. In particular the OIR invites comments on the items in the preliminary scoping memo, whether any are missing, and the appropriate prioritization and sequencing of topics. In addition, a Ruling seeking comments on cost allocation and backstop procurement issues arising from D.19-11-016 is anticipated to be issued soon, with comments due in June. VCE’s IRP is due September 1, 2020.
 - **Additional Information:** [Order Instituting Rulemaking](#) (May 14, 2020); Dock No. [R.20-05-003](#).

2016 IRP Rulemaking

On May 12, 2020, Energy Division provided final IRP templates to be used by LSEs in their 2020 IRPs. On May 14, 2020, CalCCA filed a Petition for Modification of D.19-11-016, requesting clarification of hybrid and energy storage resource Qualifying Capacity for complying with the decision and modification of the cost recovery mechanism. On May 18, 2020, PG&E filed an advice letter requesting approval of energy storage contracts totaling 423 MW/1,692 MWh pursuant to D.19-11-016. On May 20, 2020, the ALJ issued a Ruling making several corrections to a previous Ruling that established final LSE load forecasts for use by LSEs in creating their IRPs. On May 22, 2020, the IRP Modeling Advisory Group held a webinar on resource-to-busbar mapping for the 2020-2021 Transmission Planning Process.

- **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 directed VCE to 6.3 MW, 9.4 MW, and 12.6 MW, to be online by line by August 1, 2021, August 1, 2022, and August 1, 2023, respectively. In addition, 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), while also requiring LSEs to file an IRP scenario based on a more aggressive 38 MMT target in their IRPs due September 1, 2020. CESA's PFM of D.19-11-016, filed April 1, 2020, 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 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). 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:** The Ruling making revisions to LSE load forecasts for use in individual 2020 IRPs did not change anything for VCE specifically, but it did make several corrections for other CCAs as well as correcting PG&E's 2020 bundled load figure.

CalCCA's PFM requests that (1) the CPUC clarify that the QC value of an LSE's incremental procurement of hybrid resources will be determined using the permanent calculation methodology that will be adopted in R.19-11-009, and (2) the CPUC direct implementation of a cost recovery mechanism for IOU backstop procurement of system RA that requires IOUs to bill the backstopped LSE directly, rather than the LSE's customers, for procurement caused by the LSE's default to IOU backstop service.

PG&E AL 5826 seeks CPUC approval of seven system RA agreements, all with lithium-ion battery storage projects, totaling 423 MW/1,692 MWh. The procurement was in response to D.19-11-016, which directed LSEs to procure additional system RA to meet anticipated shortfalls in the coming several years. PG&E indicated it plans to issue a second RFO for additional RA resources in Q3 2020.

- **Analysis:** CalCCA's PFM, if granted, would use the permanent hybrid counting methodology to be established in R.19-11-019, which CalCCA suggested is likely to be "less conservative and more accurate," instead of an interim methodology recently adopted, which Energy Division has interpreted as applying for compliance with D.19-11-016. CalCCA's PFM would also allow CCAs to recover backstop costs through their generation rates rather than having the IOU directly recover such costs through a non-bypassable charge on CCA customers.

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

- **Next Steps:** The proceeding is now closed, except to consider pending intervenor compensation claims, CESA's PFM, and (presumably) CalCCA's PFM. All other IRP issues will be addressed through R.20-05-003. VCE's IRP is due on September 1, 2020.
- **Additional Information:** [Ruling](#) correcting LSE load forecasts (May 20, 2020); PG&E's [Advice 5826-E](#) (May 18, 2020); CalCCA PFM of [D.19-11-016](#) (May 14, 2020); [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)

On May 18, 2020, CalCCA and numerous other stakeholders submitted a joint letter expressing deep concerns with and recommending changes to the RA central procurement Proposed Decision issued March 26, 2020. The CPUC subsequently decided to hold the Proposed Decision until its June 11, 2020,

Meeting. On May 18, 2020, the ALJ issued a Proposed Decision on the limited rehearing of D.20-03-016 and Track 1 RA import issues.

- **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. 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.

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.

The RA central procurement 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.

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.

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."

- **Details:** The Track 1 PD on RA imports would adopt revisions to the RA import rules based on Energy Division's proposal, with modifications. The RA Imports PD stems from concerns that LSEs might be relying on RA resources and contracts that could not or would not actually deliver energy when it was most needed (i.e., speculative supply). The current PD would resolve a stay of D.19-10-021 that purported clarify RA import rules and differentiates between source-specific contracts (i.e., those associated with a specific resource) and non-resource-specific contracts.

CalCCA and a coalition of other stakeholders submitted a letter to the CPUC on March 18, 2020 expressing deep concerns with and recommending changes to the RA central procurement PD. The letter requests changes to the PD to incorporate financial crediting of preferred resources,

ensure that centrally procured local RA costs are recovered through the generation rate instead of the distribution rate, provide that cost allocation account for the peak load of the LSE serving that customer, limit centralized buying of local RA resources to three years to allowed preferred resources to replace fossil fuel generation, and specify that having PG&E and SCE serve as the central procurement entities in their respective service territories is only a temporary measure.

- **Analysis:** The pending Track 2 PD establishing a central procurement entity would resolve the central buyer issues. Moving to a central procurement 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.

The Track 1 PD on RA imports would primarily impact LSEs relying on RA imports to meet their RA obligations by increasing the difficulty of procuring such RA in the future.

- **Next Steps:** Opening comments are due June 8, 2020, and replies are due June 15, 2020, on the Track 1 RA Import PD. The CPUC has held the Track 2 PD on a central procurement entity until its June 11, 2020, meeting.
- **Additional Information:** [Proposed Decision](#) on Track 1 RA Imports (May 18, 2020); [CalCCA et al. Letter](#) on Track 2 PD (May 18, 2020); [Proposed Decision](#) on Track 2 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 comments and reply comments on the final CAISO local capacity requirements report on May 8, 2020, and May 13, 2020, respectively. CAISO issued its final 2021 flexible capacity requirements report on May 15, 2020, on which parties submitted comments on May 20, 2020. On May 22, 2020, the ALJ issued a Proposed Decision adopting local capacity obligations for 2021-2023, adopting flexible capacity obligations for 2021, and making changes to the RA program.

- **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.

- **Details:** The PD would approve system and flexible RA requirements for 2021, local RA requirements for 2021-2023, and near-term refinements to the RA program. Notably, among other changes to the “Maximum Cumulative Capacity” bucket system, the PD would adopt a new requirement that would limit the use of in-front-of-the-meter wind and solar resources, DR resources, and other non-dispatchable resources to 43.9% of an LSE’s RA capacity, with the remainder required to come from 24-hour dispatchable resources. The PD also adopts several revisions to RA counting conventions based on working group activities and reports, including to hydro and hybrid resources. The PD acknowledges proposals to refine effective load carrying capacity (ELCC) methodology that applies to resources like solar and wind, but determines that there is insufficient consensus to expand or revise the existing ELCC methodology, while authorizing the Energy Division to further explore a marginal ELCC approach.

The PD would revise RA penalties, currently \$6.66/kW-month for all months, by increasing them to \$8.88/kW-month for May-October and decreasing them to \$4.44/kW-month for November-April. The PD declines to establish a system or flexible RA waiver process, while observing that the system and flexible RA waivers process needs further development and study due to "significant, unresolved issues."

The PD would decline to reaggregate the “Other” local area, and instead adopts a policy providing that an LSE has fulfilled its local RA obligations in the 6 local areas if it meets certain requirements.

Finally, the PD also would direct that a local RA working group be established to address the CAISO's updated criteria and other methodological aspects, issues involving the timing of local capacity requirement studies and stakeholder opportunity for review, and how to harmonize CAISO and CPUC resource accounting rules. The working group’s report would be due September 1, 2020. The PD would also authorize the Energy Division to facilitate a working group to pursue a review of the 15% planning reserve margin.

- **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 such as wind and solar; 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:** Comments on the Track 2 PD are due June 11, 2020, replies are due June 16, 2020, and the PD may be adopted, at earliest, at the June 25, 2020, CPUC meeting.

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:** [Track 2 Proposed Decision](#) on local and flexible RA requirements and RA program refinements (May 22, 2020); [2021 Final Flexible Capacity Needs Assessment](#) (May 15, 2020); [2021 Final Local Capacity Technical Study](#) (May 1, 2020); [Ruling](#) modifying Track 2 schedule (February 28, 2020); [Scoping Memo and Ruling](#) (January 22, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

PCIA Rulemaking

On May 22, 2020, the ALJ issued a Proposed Decision rejecting a Joint Petition for Modification of D.18-07-009 filed by California Choice Energy Authority and the Center for Accessible Technology in October 2018.

- **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: The PD would find insufficient justification for the PFM's request that the CPUC modify D.18-07-009 to provide a four-year phase-out of the exemption from paying the PCIA previously provided for CCA customers in the service territories of SDG&E and SCE who receive a Medical Baseline allowance from either utility. (PG&E had phased the PCIA exemption out for medical baseline customers pursuant to a settlement agreement.)

- **Analysis:** The PD, if adopted, would not impact VCE customers.
- **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:** [Proposed Decision](#) denying Joint Petition for Modification of D.18-07-009 (May 22, 2020); [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

A prehearing conference was held May 12, 2020.

- **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.

PG&E's supplemental testimony (1) described PG&E's PSPS Program and when it was used in 2019; (2) provided 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) described the

difference between load forecasting for ratemaking purposes and load forecasting for PSPS events.

- **Details:** A scoping memo and schedule is expected to be issued next.
- **Analysis:** This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2019. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Both issues could impact the level of the PCIA in 2021.
- **Next Steps:** A scoping memo and schedule is expected to be issued next.
- **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](#).

RPS Rulemaking

On May 6, 2020, the Assigned Commissioner and ALJ issued a joint ruling (ACR) establishing requirements for retail seller 2020 RPS Procurement Plans. On May 13, 2020, the ALJ issued an Email Ruling that partially granted a request for an extension of time to June 29, 2020, for retail sellers to file their RPS Procurement Plan. On May 18, 2020, the Energy Division requested informal comments on draft 2019 RPS Compliance Report templates.

- **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 on January 29, 2020, and its final report was accepted by the Energy Division.

On February 27, 2020, the ALJ 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).

On March 10, 2020, the ALJ issued a Ruling requesting comments on the BioMAT Staff Proposal. 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 ACR on RPS Procurement Plan requirements follows the format of past Rulings on the annual process, directing LSEs to complete the applicable templates and abide by the requirements established by statute and prior Decisions. The Ruling specifically notes that D.19-02-007 directed CCAs and ESPs to "include more granular information regarding planning" in their filings in order to demonstrate that they will comply with the RPS requirements, including large increases in the long-term procurement requirements beginning in the 2021-2024 compliance period. The Ruling includes numerous substantive additions to the narrative filing requirements, requiring the use of new summary tables as well as information on how the RPS Procurement Plan corresponds to the LSE's forthcoming IRP (not due until September 1, 2020).

- **Analysis:** The ACR on RPS Procurement Plans adds substantial new requirements to VCE's filing requirements.

A pending 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 pending 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:** VCE's 2020 RPS Procurement Plan is due June 29, 2020, and its 2019 RPS Compliance Report is due August 1, 2020. Comments on the Proposed RPS Plans are due July 14, 2020, by which time a Staff Proposal will be issued on revising the RPS citation program. Motions Requesting Evidentiary Hearing are due July 21, 2020, reply comments are due July 21, 2020, and Motions to update plans are due August 10, 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:** Assigned Commissioner [Ruling \(ACR\)](#) establishing 2020 RPS Procurement Plan requirements (May 6, 2020); [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

On May 20, 2020, PG&E responded to an ALJ Ruling directing parties to the Settlement Agreement to provide updated versions of the appendices to the Settlement Agreement to reflect PG&E's 2018 recorded (as opposed to forecasted) capital expenditures.

- **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. PG&E'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:** PG&E provided updated versions of the appendices to the Settlement Agreement that are impacted by the adjustment.

- **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

Opening and reply comments, respectively, on the IOUs’ Final Essential Usage Study (EUS) Plan proposal were filed May 11 and May 26, 2020. On May 15, 2020, PG&E served updated 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.

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.

- **Details:** PG&E served updated testimony containing various recalculations based on more recent information and a proposal for a beneficial electrification rate (designated Schedule E-ELEC) featuring a time-of-use (TOU) design, no rate tiers, and a \$25/month fixed charge. The proposal stems from the CPUC’s decision on fixed charges in the consolidated 2018 residential rate design window proceedings, where the Commission rejected an SDG&E proposal for an optional high fixed charge rate, but expressed an interest in the concept and directed PG&E to make a proposal as an update to its GRC application.

PG&E’s updated testimony shows that marginal generation costs have increased as a result of D.20-03-028 in the IRP proceeding. Specifically, the marginal generation cost has increased from \$59/kW-year to \$91/kW-year due to the year of the first capacity need moving from 2023 to 2021, and the marginal energy cost has increased slightly to \$0.03628/kWh from \$0.0344/kWh in 2021 while the spread between summer peak and spring super off-peak costs dropped from \$0.07736/kWh to \$0.06900/kWh. Although it continues to propose leaving TOU windows as they are currently, it states that its updated analysis of idealized TOU periods indicates that the current 4-9 PM peak period is expected to fall outside of the triggers for new TOU windows in 2025. It states that its updated analysis shows that a 5 - 10 PM peak period would most closely match high marginal cost periods.

- **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:** Intervenor direct testimony is due October 9, 2020. A CPUC decision is anticipated for September 2021.
- **Additional Information:** [Exhibit \(PG&E-5\)](#) (May 15, 2020); [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](#).

Investigation into PG&E’s Organization, Culture and Governance (Safety Oil)

On June 2, 2020, the ALJ emailed the service list and signaled that a ruling is forthcoming that will invite party comment on the scope, schedule and priorities for this proceeding.

- **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:** The June 2, 2020, ALJ email states that a new Scoping Memo will follow party comment in response to the forthcoming Ruling.

- **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. Numerous issues proposed in the PG&E Bankruptcy OII, including municipalization and PG&E asset sales, were deferred and stated to be more properly within the scope of this proceeding.
- **Next Steps:** An ALJ ruling is expected after June 30, 2020 requesting party input on the scope, schedule and priorities for this proceeding.
- **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](#).

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 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.

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 Approves Proposed Decision on De-Energization:** The CPUC adopted a [Proposed Decision](#) on revised guidelines governing PSPS, or "de-energization" events at its May 28 business meeting. The Decision adopts, with modifications, revised guidelines initially proposed in a January 2020 Ruling.
- **Clean Power Alliance Appeals CPUC Citation for RA:** Clean Power Alliance (CPA) [appealed](#) a citation issued by the Consumer Protection and Enforcement Division (CPED) regarding CPA's Year-Ahead Resource Adequacy compliance filing for the 2020 RA year. CPED assessed a \$10,000 fine on CPA for what CPA argues was a minor error in the value it entered for a demand response resource in its filing that it subsequently corrected. Although admitting the RA value entered contained an error, CPA pointed out that it had still exceeded its System RA requirement and did not have to procure additional RA as a result of the error—yet it was still assessed a citation by CPED.
- **California Energy Commission issues Final 2019 Integrated Energy Policy Report:** The CEC issued the [Final 2019 IEPR](#). The IEPR is a lengthy report covering numerous aspects of California's energy system and the various policies that affect the energy sector. Among the report's recommendations are to further explore options for forecasting load migration from IOUs to CCAs. One notable change in the final version compared to the initial draft is an extended section on the demand forecast, which includes detailed descriptions of the different scenarios employed and the agreed-upon ways in which they will be used in different regulatory venues (e.g., the RA and IRP proceedings, the CAISO transmission planning process, etc.).

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
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
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
TOU	Time of Use
TURN	The Utility Reform Network
UOG	Utility-Owned Generation
WMP	Wildfire Mitigation Plan

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: June 11, 2020

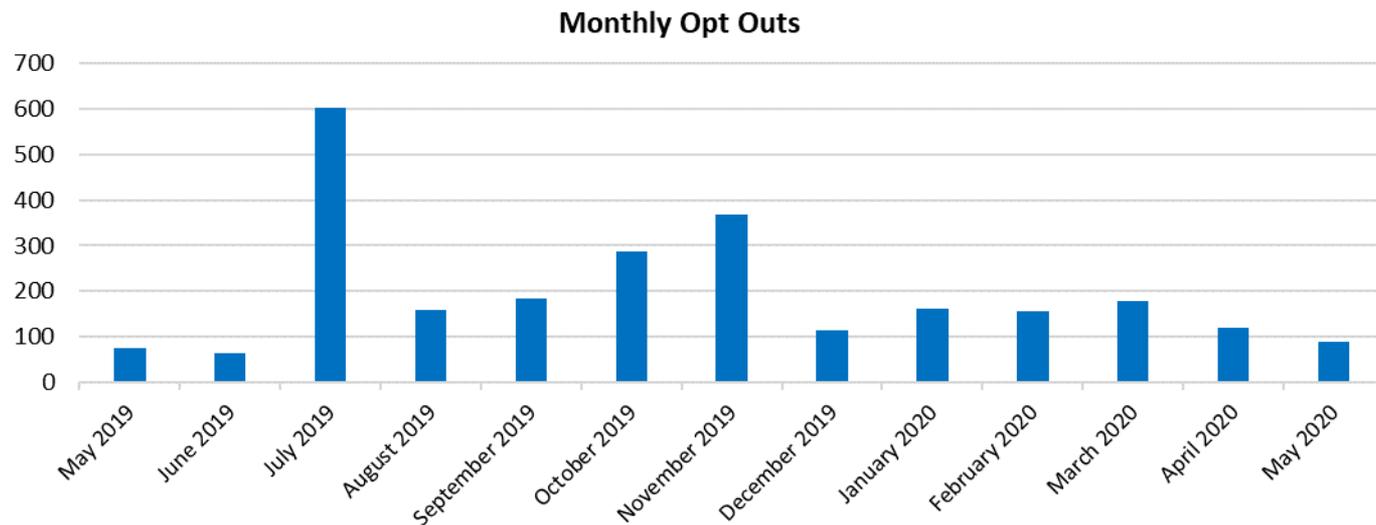
RECOMMENDATION

Receive and review the attached Customer Enrollment update as of June 2, 2020.

Item 10 - Enrollment Update

	Davis	Woodland	Yolo Co	Total	Ag	Commercial	Industrial	Residential
VCEA customers	26,443	19,558	10,213	56,214	1,825	5,783	5	48,601
Eligible customers	28,186	22,565	11,915	62,666	2,146	6,452	6	54,062
Participation Rate	94%	87%	86%	90%	85%	90%	83%	90%

- There are currently 3,062 NEM customers not included in this table. They will enroll throughout the remainder of 2020.

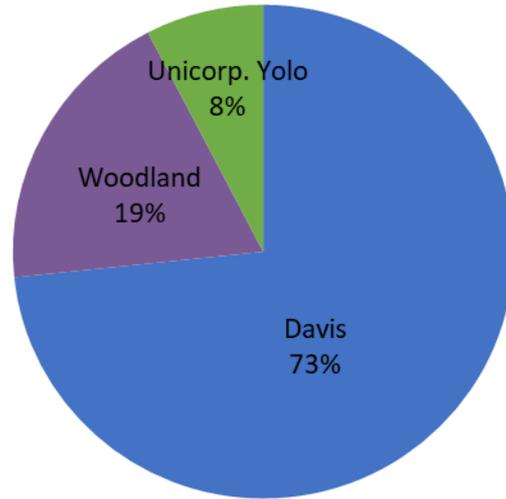


Status Date: 6/2/20

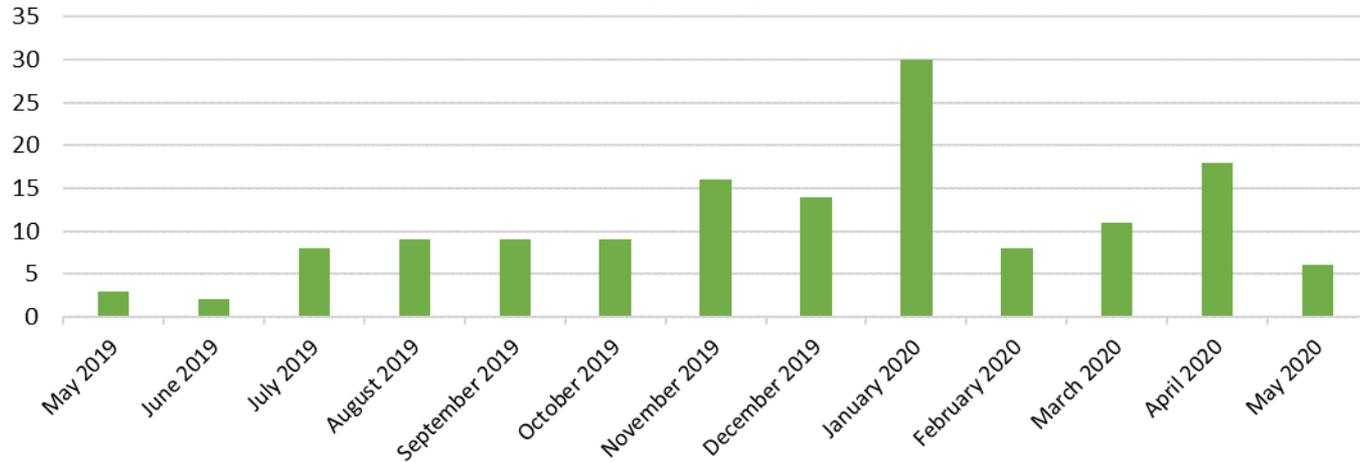


Item 10 - Enrollment Update

210 Opt Ups



Monthly Opt Ups



Status Date: 6/2/20



VALLEY
CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Community Advisory Committee May 28, 2020 Special Meeting Summary

DATE: June 11, 2020

This report summarizes the Community Advisory Committee’s special meeting held on Thursday, May 28, 2020 at 5 p.m.

- A. **Integrated Resource Plan (IRP) Workshop:** VCE Staff Dr. Olof Bystrom reviewed the process and timeline of submitting an updated IRP and reviewed the regulatory requirements and objectives of the IRP. He reminded those present that the IRP is due September 1, 2020 instead of July 1st to the California Public Utilities Commission (CPUC). Dr. Bystrom reviewed resource options and capacity, costs and market prices. Dr. Bystrom and Staff received CAC Member’s input on the different portfolio scenarios.
- B. **Reviewed potential policy strategy adjustments:** Interim General Manager Mitch Sears reviewed the background of the policy strategies and the connection with Fiscal Year 2020/2021 Operating Budget and long term power purchase agreements. Mr. Sears received input from the CAC Members on the policy strategies options presented.
- C. **2020 Long Term Calendar and future CAC meetings:** The CAC discussed future meetings due to the Covid-19 crisis and agreed to continue to meet monthly via teleconference using Zoom with their meetings starting at 5 p.m. Should conditions change, then the CAC and Staff will readdress when necessary.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 11

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Jim Parks, Director of Customer Care and Marketing

SUBJECT: Defer Customer Opt-Out Fees for Fiscal Year 2020/21

DATE: June 11, 2020

RECOMMENDATION

Defer Customer Opt-Out Fees for Fiscal Year 2020/21. **Defer opt out fees for the City of Winters for one calendar year, January 1, 2021 to through December 31, 2021.**

BACKGROUND

Prior to beginning service in June 2018, the VCE board of directors waived opt-out fees for VCE's first year of operation. Opt-out fees (\$5 for residential and \$25 for non-residential) were originally designed to reduce the number of opt-outs and to partially recover the cost of processing opt-outs. In 2019, the Board approved deferment of customer opt-out fees for an additional year.

Community choice aggregators (CCAs) differ in their approach to opt-out fees. Several have waived the fee. Some have kept the fee and have had few complaints. Others have kept the fee and had significant complaints.

UPDATE

After two full years of operation, staff recommends that opt-out fees be deferred for another year:

- VCE's back-office systems are in place to automate opt-outs/opt-ins, so administrative costs are low.
- Customers have expressed concerns with opt out fees.
- Financial impacts are minimal. Now that VCE is fully operational, the opt-out numbers have dropped dramatically compared to start-up, minimizing impacts on revenue.
- **Processing the opt out fees could cost more than the revenue generated from the fees.**

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: VCE Board of Directors

FROM: Mitch Sears, Interim General Manager
Jim Parks, Director of Customer Care and Marketing

SUBJECT: SACOG Grant Update

DATE: June 11, 2020

RECOMMENDATION

Authorize the Interim General Manager to approve the Memorandum of Understanding between the City of Davis and Valley Clean Energy Alliance to receive funds (\$150,000) for the installation of electric vehicle charging infrastructure per the SACOG grant.

BACKGROUND

VCE joined with the cities of Davis and Woodland and Yolo County to apply for a \$2.9 million grant from the Sacramento Council of Governments (SACOG). The purpose of the grant is to install electric vehicle charging infrastructure in Yolo County. The proposal was successful, and the grant was approved by the SACOG board of directors on December 20, 2018. The project is titled Electrify Yolo.

Since that time the Electrify Yolo team, made up of VCE member jurisdiction staff, has worked to facilitate a fund exchange agreement between SACOG and the City of Davis (Davis), and to further develop the project. The fund exchange agreement was approved by SACOG in late December 2019 and the Davis City Council approved the agreement at the end of January. Now that funding is in place, the Electrify Yolo team is working to implement the project.

UPDATE

Due to the fund exchange arrangement, each jurisdiction (Woodland, Yolo County, VCE) will have an MOU with Davis and will be responsible for implementing their own projects. Davis will take the lead on reporting project progress to SACOG.

VCE is responsible for implementing electric vehicle charging infrastructure in the City of Winters. First priority is to install one or more DC fast chargers, with secondary priority to install Level 2 chargers. The site characteristics (available load on the transformer, circuit voltage, etc.) will determine what is installed.

The MOU between the City of Davis and VCE is for \$150,000 is ready to be signed by VCE and will be sent back to Davis for final approval. Once approved by Davis, VCE will send in a request for 85% of the funds (\$127,500), per the MOU. The funds will remain on account with VCE until spent. If the completed project meets the MOU requirements, VCE can request the remaining funds, 15% or \$22,500.

VCE has a letter agreement in place with Chase Electrical Engineering (Chase) to perform a feasibility study and design of the Winters infrastructure. Chase will provide recommendations as to what is possible at the site along with estimated costs. The results of the study will determine if one or more DC fast chargers can be installed, a combination of DC fast and Level 2 chargers, or if the installation will be for Level 2 chargers only. VCE staff is currently working with staff from Winters and Chase to move the project forward.

Once the design is complete, VCE and Winters will bid the project and construction can begin. Concurrent with the design process, VCE staff is developing bid documents so the project can be bid quickly once VCE and Winters agree on the project design.

In spite of delays in getting funding approval and the COVID-19 pandemic, the project is finally moving forward and we hope to have construction started by the end of this year.

Attachment

1. VCE/City of Davis MOU
2. Resolution

MEMORANDUM OF UNDERSTANDING

Between City of Davis and Valley Clean Energy Alliance

This Memorandum of Understanding ("MOU") is entered into by the City of Davis ("Davis") and the Valley Clean Energy Alliance ("VCE") together known as the "Parties", in order to implement electric vehicle ("EV") infrastructure identified in the "Electrify Yolo Project" ("Project"). The Project is funded with local Davis funds through a Fund Exchange Agreement between Davis and the Sacramento Area Council of Governments ("SACOG"). This MOU is effective as of the date of the last signature below.

I. RECITALS

- A. **Whereas**, the Parties were partner jurisdictions in a jointly submitted "Electrify Yolo Project" application to the SACOG Green Region grant funding opportunity in the Fall 2018, with VCE and Davis identified as Project Applicants. The Project supports EV infrastructure and improved multi-modal hub development in Yolo County and the cities of Davis, Winters, and Woodland. Other implementing Project partner jurisdictions include Yolo County and City of Woodland; and
- B. **Whereas**, in December 2018, the Parties were notified that they were awarded a \$2,912,000 grant in federal funds, with a match requirement of 11.47%, for a total Project cost of \$3,289,000; and
- C. **Whereas**, based on SACOG funding policies and preference to deliver funds through a Fund Exchange Agreement to a qualified Applicant, and understanding the opportunity to expedite project implementation by simplifying/eliminating certain federal funding requirements including 1) eliminating National Environmental Protection Agency (NEPA) requirements and 2) eliminating the 11.47% match requirement, the Parties agreed that Davis will execute the requested Fund Exchange Agreement with SACOG, and will be the fiduciary agent for the Project, now at a total Project cost of \$2,912,000; and
- D. **Whereas**, on January 28, 2020, Davis City Council authorized the Davis City Manager to 1) sign the SACOG/Davis Fund Exchange Agreement, which exchanges \$2,912,000 federal funding in the Metropolitan Transportation Improvement Program from the Electrify Yolo Project Green Region grant award into the City of Davis Richards/I-80 Interchange Project, and to replace an equal \$2,912,000 in local funds for the Project, 2) prepare and execute a Budget Adjustment in Fiscal Year 2019-20 to provide \$2,912,000 in local funds for Project implementation, and 3) prepare and execute MOUs between Davis and each Project partner jurisdiction; and
- E. **Whereas**, the Parties enter into this MOU to recognize their mutual interests and goals, and to formalize an agreement to identify roles and responsibilities for Project implementation of EV infrastructure and improved multi-modal hub development.

Accordingly, the Parties hereby agree as follows:

II. STATEMENT OF SHARED GOALS AND PRINCIPLES

- A. The Parties recognize that the implementation of EV charging infrastructure is a shared goal. The Parties desire to provide networked EV charging which is either publicly accessible and/or for county/municipal use on public property.
- B. The Parties desire to establish regular communication channels and meet and share information in an effort to jointly implement county-wide networked EV charging, based on the Fund Exchange Agreement with SACOG and among all regional Project jurisdictions.
- C. The Parties agree to meet the requirements and minimum qualifications of the executed Fund Exchange Agreement (**Attachment A**), dated December 18, 2019, and as noted herein, including completion of the Project by December 31st, 2023. To the extent any provision of this MOU conflicts with the terms of the Fund Exchange Agreement, the terms of the Fund Exchange Agreement shall be controlling.

III. AGREEMENTS FOR PROJECT IMPLEMENTATION

A. Definitions

- 1. 'Networked' EV Chargers for this Project shall mean:
 - a. Network capable, with ability for agency to engage in two-way communication via internet or cell phone;
 - b. Demand response capable;
 - c. Flexibility for agency to require users to pay for electricity (fuel), and to have varying fuel costs for different users and/or different lengths of time (e.g. for agency employees vs. the public; free for the first hour, then charged at increasing rates for subsequent hours; or other);
 - d. Providing agency with ability to push software upgrades through the communication channel; and
 - e. Providing agency with ability to collect use data and/or maintenance/operational data.
- 2. 'Publicly accessible' EV Chargers for this Project shall mean available for public use at a minimum of six hours per day (e.g. 9am to 3pm), for a minimum of five days/week, with the goal of providing maximum time of public use. Placing chargers within fenced county/municipal properties such as libraries, county/municipal offices or other locations is acceptable as long as the minimally available hours noted here are provided.

3. 'Public property' for this Project shall mean property owned by Yolo County and/or Davis, Woodland or Winters, incorporated cities within Yolo County.

B. Minimum Implementation Requirements:

The Parties agree to the following Project minimum implementation requirements:

1. All project funding provided to VCE will be expended exclusively for the installation of EV charging infrastructure in Winters, (or Davis, Woodland, or Yolo County) and all work and installations will be completed by or before December 31st, 2023.
2. VCE agrees to complete all Project implementation and fund expenditures using its approved agency procurement/purchasing policies, and contract bidding/award process to install and maintain EV charging infrastructure, in accordance with their own local requirements and in compliance with all applicable state or federal laws and regulations, including but not limited to payment of prevailing wages. VCE shall require all contractors to obtain adequate insurance to cover any risks associated with the construction and operation of such infrastructure.
3. VCE will provide copies of paid invoices to Davis on a minimum of a quarterly basis (starting three months from the effective date of this MOU), or as completed, as proof of completion of EV charging infrastructure expenses, including consultant and contractor services for site selection, design, permitting, construction document completion, any required environmental review, installation and maintenance of EV charging infrastructure.
4. VCE will provide annual reporting on progress, including photos as appropriate, to Davis no later than May 30 of each year of project implementation, starting on May 30, 2020, and continuing while the project is active and until VCE has satisfactorily performed all of its obligations hereunder, including completion of all required EV charger installations and has provided unconditional releases from all contractors performing work for VCE pursuant to this MOU.
5. Upon total Project implementation, and no later than October 31st, 2023, VCE will submit a final report with photographs of the physical construction, including any relevant documentation needed to demonstrate full project delivery. VCE acknowledges that failure to perform on or deliver the required Project as per this MOU may be considered by Davis as a disqualifying factor for future funding collaboration with Davis, and/or as a disqualifying or discounting factor for existing or future projects proposed through SACOG's competitive funding programs. If VCE fails to timely complete the work and expend the MOU funds identified in

Section III(C) below by such time, it shall return any unspent funds to Davis or enter into an agreement with Davis to provide for the expenditure of such funds.

6. VCE will install a minimum of the following:
 - One (1) networked, publicly accessible Level 3 (DC Fast Charger) in downtown City of Winters public property location, within 5 miles of major freeway corridor (I-505), with funding for an optional maintenance contract of up to five years; **OR**
 - Two (2) networked, publicly accessible Level 2 EV Charging stations in Winters on public property, with funding for an optional maintenance contract of up to five years.

If MOU funds remain after the minimum station(s) above are constructed, VCE agrees that all remaining funding will be used for additional Level 2 and/or Level 3 (DC Fast Chargers) in Winters, Davis, Woodland, or Yolo County, either available to the public and/or for exclusive county/municipal use on public property. Such facilities shall be adequately maintained, and VCE may also use MOU funds to enter into a maintenance contract of up to five years.
7. VCE will submit to Davis, within one week of the execution of this MOU, a letter on agency letterhead, signed by General Manager or Board of Directors (as applicable), indicating the names and positions of those authorized to submit reports and request funds.
8. Additionally, Davis will be responsible for implementing remaining Fund Exchange Agreement requirements, including completing minimum remaining quantities of networked, publicly accessible Level 2 and Level 3 (DC Fast Chargers) in City of Davis locations on public property, purchase of mobile solar chargers, and purchase/lease of EVs for implementation of an electric microtransit pilot in Davis.
9. Additionally, Davis will submit progress reports by email to SACOG no less than annually on July 1st of each year the overall project is active, on behalf of the Electrify Yolo Project. Davis will submit a final report of the full Project to SACOG by email, with photographs of the physical construction, including any relevant documentation needed to demonstrate full Project delivery, no later than December 31st, 2023.

C. Funding Allocation of Total Project Award

1. Parties agree to the following Project fund share allocation to VCE from the \$2,912,000 SACOG grant total: \$150,000 for implementation of minimum requirements above.
2. Parties agree that Davis will act as Project fiduciary agent, and will distribute funds to VCE as follows:
 - a. Following provision to Davis of VCE Board of Directors signed Resolution and Budget documentation, Davis will provide 85% of fund share allocation to VCE for implementation of Project minimum requirements above.
 - b. Following provision of VCE final report as noted above, along with an invoice for remaining 15%, Davis will reimburse the final 15% installment.

D. Overall Organization and Coordination among Parties

1. Agency representatives: Each Party will identify one (1) responsible representative and one (1) alternate as Project Representatives who will attend meetings, provide progress reports and coordinate with other Parties as necessary in a timely manner. These individuals will be named in the Agency letter described in III.B.6 of this MOU.
2. Meetings: During the first year after the effective date of this MOU and/or during the Project implementation, the Party Representatives shall meet in person at least quarterly, and/or as necessary to implement the Project, discuss their mutual opportunities and how to best leverage partner resources; identify challenges or areas of concern and identify potential solutions; and explore additional funding or resources for further EV charging infrastructure and improved multi-modal hub development.

IV. GENERAL PROVISIONS

- A. The Parties intend and agree that this MOU, and each and every provision thereof, shall be binding and enforceable upon the Parties according to the terms and provisions specified herein.
- B. This MOU constitutes the entire agreement between the Parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the Parties shall be enforceable only as set forth in any other applicable written agreement.
- C. VCE shall indemnify, defend and hold harmless the City (Davis), its officers, employees and agents from any and all claims, demands, causes of action, losses,

damages, costs and expenses of any kind arising from its acts or omissions under this MOU, including but not limited to any damage caused by VCE or its contractors to the property of the City(ies). The City(ies) shall indemnify, defend and hold harmless VCE, its directors, officers, employees and agents from any all claims, demands, causes of action, losses, damages, costs and expenses of any kind arising from its acts or omissions under this MOU, including but not limited to any damage caused by the City to the property of VCE.

- D. Public Records Act - Upon its execution, this MOU (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.
- E. Applicable Laws - This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this MOU shall be filed and resolved in a California State court located in Woodland, California. After consultation with the undersigned counsel, each party to this MOU represents and warrants that it authorized and has the capacity to enter into this MOU, and that each signatory to this MOU on its behalf is authorized and has the capacity to sign this MOU on its behalf.
- F. Except to the extent other remedies for default under this MOU are otherwise specified herein, the Parties' obligations under this MOU shall be specifically enforceable, and any non-defaulting party may bring an action for specific performance or any other appropriate relief in the Superior Court. This MOU is not intended, nor shall it, create any right or remedy in any third party.
- G. This MOU may be executed in multiple counterparts and signatures exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last day and month provided below:

Memorandum of Understanding
Between City of Davis and Valley Clean Energy Alliance to
Implement Electric Vehicle Infrastructure
May 2020

Dated: _____

CITY OF DAVIS

Mike Webb, City Manager

Approved as to form:

Inder Khalsa, City Attorney

Dated: _____

VALLEY CLEAN ENERGY ALLIANCE

Mitch Sears, Interim General Manager

Approved as to form:

Attorney

Attachment A:
SACOG/City of Davis Fund Exchange Agreement



1415 L Street,
Suite 300
Sacramento, CA
95814

916.321.9000
sacog.org

December 18, 2019

Mike Webb, City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616

Re: “Electrify Yolo” Green Region Project Fund Exchange

Dear Mr. Webb:

This letter confirms the agreement between the City of Davis (City) and the Sacramento Area Council of Governments (SACOG) for a fund exchange transfer between SACOG and City projects to expedite the development of the Electrify Yolo Project. This project was submitted to the SACOG Green Region grant program by Valley Clean Energy and City of Davis, representing three regional partner agencies—Yolo County, City of Davis and City of Woodland.

Background

In December 2018, the SACOG Board of Directors authorized the award of a Green Region grant in the amount of \$2,912,000 to Valley Clean Energy and City of Davis, representing the regional “Electrify Yolo” Project. The Electrify Yolo Project supports electric vehicle infrastructure and improved multi-modal hub development in Yolo County, the City of Davis and City of Woodland. SACOG and the City are committed to implementing the Electrify Yolo Project (YOL19448) in accordance with the terms of the Green Region grant. Suitable local projects and associated local funds have been identified for the fund transfer (from YOL17140, I-80/Richards), such that sufficient local funds are allocated to implement both the Electrify Yolo Project and previous SACOG supported City projects. Funds proposed for an exchange transfer total \$2,912,000.

On January 16, 2019, SACOG, City of Davis and Valley Clean Energy staff discussed the Electrify Yolo Project, which includes the installation of electric vehicle chargers, including Level 2 chargers, DC Fast chargers, and mobile chargers in Davis, Woodland and Yolo County, and the implementation of an electric microtransit pilot in Davis. City staff agreed to work through a contractor Request for Proposals (RFP) process and award the contract using City local funding, per City procurement policies and fund eligibility policies.

Agreement

The City and SACOG now agree that SACOG will program the following in the Metropolitan Transportation Improvement Program: \$2,912,000 in Congestion Mitigation and Air Quality funds (CMAQ) from the Electrify Yolo Project (YOL19448) Green Region grant award to replace an equal \$2,912,000 in local funds into the Richards/I-80 Project (YOL17140). The City and SACOG agree that this exchange will

- Auburn*
- Citrus Heights*
- Colfax*
- Davis*
- El Dorado County*
- Elk Grove*
- Folsom*
- Galt*
- Isleton*
- Lincoln*
- Live Oak*
- Loomis*
- Marysville*
- Placer County*
- Placerville*
- Rancho Cordova*
- Rocklin*
- Roseville*
- Sacramento*
- Sacramento County*
- Sutter County*
- West Sacramento*
- Wheatland*
- Winters*
- Woodland*
- Yolo County*
- Yuba City*
- Yuba County*

have no net impact for funding implementation for either project. In other words, this is a "dollar for dollar" swap.

SACOG agrees to complete this amendment to the Metropolitan Transportation Improvement Plan by or before January 8, 2020. The City agrees that local funds committed to the projects and funding amounts listed will be reallocated to support and implement the scope of the Electrify Yolo Project.

The Electrify Yolo Project scope includes professional services to site, design, permit, construct, and install between 15 to 40 Level 2 Chargers and 2 to 5 DC Fast Chargers in downtown areas within ½ to 5 miles of major freeway corridors in Yolo County, Davis, and Woodland locations. The Electrify Yolo Project will also fund purchase of 2 to 10 Mobile Chargers of the type similar to "EV ARC" solar standalone charging stations. Additionally, the Electrify Yolo Project will fund an Electric Shuttle Pilot Project in Davis, with purchase or lease of one or more electric vehicles to transport 8 or more people.

The City agrees to submit project status updates to SACOG by email no less than annually on July 1st of each year the project is active. The City agrees that the Electrify Yolo Project will be completed by December 31st, 2023. Upon completion, the City agrees to submit a final report with photographs of the physical construction, including any relevant documentation needed to demonstrate full project delivery. The City acknowledges that failure to perform on or deliver the Electrify Yolo Project may be considered by SACOG as a disqualifying or discounting factor for existing or future projects proposed through SACOG's competitive funding programs.

Sincerely,



José Luis Cáceres

MTIP and Project Delivery Team Manager, SACOG

I, the undersigned, concur with the terms stipulated in the above letter.



Mike Webb
City Manager, City of Davis



Date

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE)
APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN VCE AND THE CITY OF
DAVIS TO RECEIVE FUNDS FOR THE INSTALLATION OF ELECTRIC VEHICLE CHARGING
INFRASTRUCTURE AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH
LEGAL COUNSEL TO EXECUTE THE MEMORANDUM OF UNDERSTANDING
AND RELATED DOCUMENTS**

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, in August 2018, VCE joined with the cities of Davis and Woodland and Yolo County to apply for a \$2.9 million grant from the Sacramento Area Council of Governments (SACOG) to install electric vehicle charging infrastructure in Yolo County;

WHEREAS, the regional grant application was approved by the SACOG Board of Directors in December 2018, with the project titled “Electrify Yolo”, and to be completed by December 31, 2023;

WHEREAS, in December 2019 a fund exchange agreement between SACOG and the City of Davis (Davis) was approved by SACOG and the Davis City Council approved the agreement at the end of January 2020;

WHEREAS, each jurisdiction (Woodland, Yolo County, VCE) will have a Memorandum of Understanding (MOU) with the Davis and will be responsible for implementing their own projects, with Davis taking the lead on reporting project progress to SACOG;

WHEREAS, VCE is responsible for implementing electric vehicle charging infrastructure in the City of Winters; and,

WHEREAS, the MOU between VCE and Davis is to fund the implementation of the electric vehicle charging project, is in the amount of \$150,000 of which 85% will be provided after submitting a letter requesting it and 15% will be distributed upon completion of the project, with any unused funds being returned back to the City of Davis.

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

1. The MOU between VCE and the City of Davis to receive funds in the amount of \$150,000 for the installation of electric vehicle charging infrastructure per the SACOG grant is hereby approved.
2. The Interim General Manager, in consultation with legal counsel, is authorized to execute the MOU and any other related documents and processes to implement this project.

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: Memorandum of Understanding between VCE and City of Davis – SACOG Grant

Attachment A

Memorandum of Understanding between VCE and City of Davis – SACOG Grant

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

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: June 11, 2020

RECOMMENDATION: Adopt a resolution authorizing the Interim General Manager to sign Amendment 17 to Task Order 4 (Operational Staff 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 17 to SMUD agreement Task Order 4 (Operational Staff Services) extends the Director of Finance and Operations dedicated operational staff through September 30, 2020. The fixed annual fee for the Director of Finance and Operations is increased to \$280,000, effective July 1, 2020. The Director of Customer Care and Communications role is not being extended beyond June 30, 2020, as VCE's in-house Director of Customer Care and Marketing will be starting at the end of June.

Financial Impact:

The elimination of the Director of Customer Care and Communications role reduces VCE's expenditure with SMUD by the \$21,250 monthly fixed fee. This cost reduction is offset by the staffing cost to hire a Director of Customer Care and Marketing as a VCE employee.

The monthly fee for the Director of Finance and Operations dedicated operational staff is increasing from \$21,250 to \$23,333.33 monthly, a 10% increase for the three month extension. These cost changes are included in the FY2020/2021 draft operating budget, which is being 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 17 to Task Order 4 (Operational Staff Services).

Attachments

1. Amendment 17 to Task Order 4 (Operational Staff Services)
2. Resolution Authorizing Interim General Manager to sign Amendment 17 to the VCE-SMUD Professional Services Agreement

AMENDMENT 17 TO EXHIBIT A: Scope of Services

A.4 Task Order 4 – Operational Staff Services

SMUD and VCEA agree to the following services, terms, and conditions described in this Amendment 17 to Exhibit A, Task Order No. 4 (Amendment 17), 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 17 conflict with any general provisions in the Agreement or Task Order 4, the provisions of this Amendment 17, 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 an Amendment thereof.

The Effective Date of this Amendment 17 is the date of last signature below.

The Parties hereto mutually agree to the following changes to Task Order No. 4:

A. Amend Section 4.1, Term of Task Order 4. Sub-section 4.1.1, Dedicated Operational Staff, Title and Paragraph 1, are deleted and replaced with the following:

“4.1.1, Dedicated Operational Staff and Power Director

Notwithstanding Section 4.1, Term of Task Order 4, SMUD will assign dedicated operational staff as described in Section 1.1 of this Task Order 4 for Finance and Operations and Customer Care and Communications to be available onsite at VCEA offices. SMUD will provide the Finance and Operations Director through September 30, 2020. The term of the Customer Care and Communications Director will not be extended beyond June 30, 2020. The Parties may mutually agree to extend or modify any portion of the operational staff services as provided in Section 4.2.1 of Task Order No. 4.”

B. Amend Section 5, Compensation for Services. Sub-section 5.1 Dedicated Operational Staff is revised to update the pricing as follows:

“Dedicated operational staff will be provided at the following fixed annual fee, to be billed monthly, in arrears, to VCEA. The Fixed Fee below is effective beginning July 1, 2020 and will remain effective until otherwise mutually agreed in writing by the Parties.

Dedicated Operational Staff	Fixed Fee
Finance and Internal Operations	\$280,000

SIGNATURES

The Parties have executed this Amendment 17, 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: Arlen Orchard

Title: Chief Executive Officer and General Manager

Date: _____

**Approved as
to Form:** _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE
APPROVING AMENDMENT 17 TO TASK ORDER 4 THE SACRAMENTO MUNICIPAL
UTILITIES DISTRICT PROFESSIONAL SERVICES AGREEMENT AND AUTHORIZING THE
INTERIM GENERAL MANAGER TO SIGN THE AMENDMENT ON BEHALF OF VALLEY
CLEAN ENERGY**

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; and,

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

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 support services; and,

WHEREAS, on December 12, 2017, the VCE Board approved Task Order 4 to provide Operational Staff Services to VCE for program launch and operations; and,

WHEREAS, Task Order 4 was set to expire February 28, 2019 and Interim General Manager Mitch Sears signed Amendment 7 to Task Order 4 extending the term to June 30, 2019; and,

WHEREAS, in October 2018 Amendments 3 and 5 to Task Order 4 were approved adding scope of services related to power purchase agreements and designating an On-call Proxy Power Director, and set compensation for said services;

WHEREAS, in December 2018 Amendment 6 to Task Order 4 was approved extending dedicated operational staff through February 28, 2019; and,

WHEREAS, in February 2019 Amendment 7 to Task Order 4 was approved extending dedicated operational staff through June 30, 2019; and,

WHEREAS, in April 2019 Amendment 8 to Task Order 4 was approved 1) extending dedicated operational staff and the Power Director through June 30, 2020, 2) replacing sub-section 4.2.1

term and termination notification, and 3) increasing the fixed fee for operational staff effective July 1, 2019; and,

WHEREAS, in August 2019, Amendment 13 to Task Orders 3 and 4 was approved updating compensation for services and extending the term through June 30, 2020;

WHEREAS, on February 13 2020, Amendment 15 to Task Order 4 was approved canceling the On-call Proxy Power Director effective December 20, 2019, adding scope of services to transition the Power Proxy Director to a VCEA employee, and updating compensation for services to an hourly rate for professional services; and,

WHEREAS, Amendment 17 to Task Order 4 extends the Director of Finance and Operations dedicated operational staff through September 30, 2020 and increases the fixed annual fee effective July 1, 2020, for this position.

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

1. approve Amendment 17 to Task Order 4 (operational staff services) and authorize the Interim General Manager to sign the Amendment on behalf of VCE.

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

EXHIBIT A - Amendment 17 to Master Professional Services Agreement Task Order 4

EXHIBIT A

Amendment 17 to Master Professional Services Agreement Task Order 4

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Keyes & Fox – Contract Extension

Date: June 11, 2020

RECOMMENDATION

Adopt a resolution authorizing the Interim General Manager, in consultation with VCE Legal Counsel, to execute an amendment extending VCE’s existing contract with Keyes & Fox LLP for Regulatory and Legal Services in an amount not to exceed \$180,800.

BACKGROUND & DISCUSSION

The VCEA Board has previously authorized the Interim General Manager to execute a contract and subsequent contract extension with Keyes & Fox LLP for legal services related to regulatory compliance and regulatory advocacy. The original contract expired December 31, 2018 and the extension is set to expire June 30, 2020.

The Keyes & Fox contract provides the following scope of services: 1) Determine and review regulatory compliance obligations, 2) Support VCE staff as its expert regulatory resource and 3) Review contracts between VCEA and third parties.

In addition to services provided to VCE, Keyes & Fox provides regulatory counsel support to CalCCA and other CCA joint CPUC filings. Since a majority of VCE’s advocacy in proceedings before regulators has been through CalCCA since program launch in 2018, the need for substantial amount of regulatory advocacy for VCE by Keyes & Fox is anticipated to be limited at this time. However, VCE requires continued regulatory counsel support for CPUC filings and regulatory activities specific to VCE (e.g. Resource Adequacy filings, Integrated Resource Plan submissions, etc). The scope of Keyes & Fox work for VCE is similar to regulatory counsel work required by all individual CCA’s.

The recommended amendment will extend the Keyes & Fox contract one year to June 30, 2021. All other provisions of the contract remain unchanged.

FISCAL IMPACT

The costs associated with the Keyes & Fox contract extension are accounted for in VCE’s proposed FY 2020/21 Budget scheduled for Board consideration at this meeting (June 11, 2020).

Costs for the Keyes & Fox contract extension is a time and materials-based contract not to exceed \$180,800.

ATTACHMENTS

1. Resolution including the following exhibits:
 - a. Contract Extension
 - b. Amended Exhibit A – Scope of Services
 - c. Amended Exhibit C – Schedule of Services
 - d. Amended Exhibit D - Payment

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT THREE (3) TO THE KEYES & FOX LLP AGREEMENT FOR REGULATORY COMPLIANCE AND ADVOCACY LEGAL SERVICES AND AUTHORIZING THE VCE INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT

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; and,

WHEREAS, on June 26, 2018 an agreement was entered into between Valley Clean Energy and Keyes & Fox LLP to provide legal services related to regulatory compliance and regulatory advocacy, expiring December 31, 2018; and

WHEREAS, Keyes & Fox LLP also provides regulatory counsel support to CalCCA and other Community Choice Aggregators on joint California Public Utilities Commission filings; and

WHEREAS, on January 23, 2019 Amendment One (1) to the Keyes & Fox LLP agreement was approved extending the term through December 31, 2019 and refining the previous scope of services and budget for 2019; and,

WHEREAS, on February 13, 2020 Amendment Two (2) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2020 to align the contract from a calendar year to a fiscal year (July – June) and updated the scope of work and budget consistent with the contract extension; and,

WHEREAS, Amendment Three (3) extends the Agreement for an additional twelve months to expire on June 30, 2021, revises the scope of service, and sets a not exceed amount of \$180,000.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby authorizes the VCE Interim General Manager, in consultation with VCE Legal General Counsel, to finalize, approve and execute on behalf of VCE Amendment Three (3) to the Keyes & Fox LLC Agreement for regulatory legal services modifying the terms and time of the agreement as set forth in the attached Exhibit A - Amendment Three (3) to Keyes & Fox LLC Agreement.

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: Exhibit A - Amendment Three (3) to Keyes & Fox LLC Agreement

Exhibit A

Amendment Three (3) to Keyes & Fox LLC Agreement

AMENDMENT NO. THREE (3)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
KEYES & FOX LLP

1. Parties and Date.

This Amendment No. Three (3) to the Agreement for Consultant Services is made and entered into as of this 30th day of June, 2020 by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California with its principal place of business at 604 2nd Street, Davis, California 95616 (“VCEA”) and Keyes & Fox LLP, a Limited Liability Partnership with its principal place of business at 580 California St., 12th Floor San Francisco, California 94104 (“K&F”). VCEA and K&F are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Keyes & Fox LLP. VCEA and K&F have entered into an agreement entitled “Agreement for Consultant Services” dated June 26, 2018 for the purpose of retaining K&F to provide the services described in the Agreement, Amendment No. One to that Agreement dated February 6, 2019 and Amendment No. Two to that Agreement dated December 31, 2019. (collectively referred to as “Agreement”)

2.2 Amendment Purpose. VCEA and K&F desire to amend the Agreement to extend the Agreement for an additional twelve months to expire on June 30, 2021 and, therefore, to revise the scope of services, and provide the not-to-exceed compensation amount for the additional twelve (12) months.

2.3 Amendment Authority. This Amendment No. Three (3) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

3.1 Amendment. Section 1.4 of the Agreement is hereby amended in its entirety to read as follows:

1.4 Term The term of this Agreement, as amended, shall begin on July 1, 2020 and shall end on June 30, 2021, unless amended as provided in the

Agreement, or when terminated as provided in Article 5.

3.2 Amendment. Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

4.1 Compensation This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed one hundred eighty thousand eight hundred and no/100 dollars (\$180,800) without written approval of VCEA. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3 Amendment. Exhibits A, C and D of the Agreement are hereby replaced in their entirety by the Exhibits A, C and D attached hereto, which are incorporated herein.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. Three (3), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. Three (3). From and after the date of this Amendment No. Three (3), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Three (3).

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. Three (3).

3.6 Severability. If any portion of this Amendment No. Three (3) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. THREE (3) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND KEYES & FOX LLP**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. THREE (3) as of the 30th day of June 2020.

VALLEY CLEAN ENERGY ALLIANCE

KEYES & FOX LLP

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: _____ Partner

Printed Name: _____ Sheridan Pauker

APPROVED AS TO FORM:

By: _____
Harriet Steiner
VCEA Attorney

EXHIBIT A

SCOPE OF SERVICES

Services Keyes & Fox LLP Will Provide
<p><u>Task 1:</u> Maintain a calendar of regulatory compliance filing obligations and deadlines and provide a weekly snapshot highlighting upcoming filing dates and responsibilities. The weekly snapshot includes CPUC, CAISO, CEC, CARB, and U.S. EIA compliance deliverables.</p>
<p><u>Task 2:</u> Review compliance filings after they are prepared by SMUD to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) 2020 RPS Compliance Report; (2) Any follow-up on 2020 RPS Procurement Plan; (3) 2021 RPS Procurement Plan; (4) 2020 IRP; (5) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (6) Monthly Load Migration Forecast (12 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total). Once complete, K&F will submit the (1) RPS Compliance Report and (2) RPS Procurement Plan and (3) IRP filings to appropriate regulatory authorities on behalf of VCE.</p>
<p><u>Task 3:</u> Support VCEA staff team as its expert regulatory resource by (i) participating in California Community Choice Association’s (“CalCCA’s”) weekly regulatory call to keep abreast of positions and activities and informing VCEA of any proceedings that will directly impact VCE in a way that CalCCA is not directly addressing, (ii) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCEA in a timely manner of issues arising in those proceedings that will critically impact VCEA, and attending monthly Board Meetings to explain such issues, if necessary, and (iii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCEA’s compliance obligations.</p>
<p><u>Task 4:</u> Review contracts entered between VCEA and SMUD and VCEA and third parties. K&F understands many of the key contracts between VCEA and SMUD have already been executed and that the need for additional contracting with SMUD and third parties will be limited, so K&F proposes setting aside a small portion of the total budget for this item.</p>

An initial list of the key regulatory proceedings at the California Public Utilities Commission discussed above is as follows:

Docket Number	Subject Matter
R.11-05-005	Renewable Portfolio Standard Rulemaking
I.15-08-019	Investigation into PG&E Organization, Culture & Governance
R.16-02-007	Integrated Resource Planning Rulemaking
R.17-06-026	Power Charge Indifference Adjustment Rulemaking
R.17-09-020	Resource Adequacy Rulemaking (2019 – 2020)
R.18-07-003	RPS Rulemaking
A.18-12-009	PG&E Phase I GRC
R.19-01-006	Wildfire Cost Recovery Methodology Rulemaking
R.19-03-009	Direct Access Rulemaking
R.19-07-017	Wildfire Fund Non-Bypassable Charge (AB 1054) Rulemaking
I.19-09-016	Investigation of PG&E Bankruptcy Plan
R.19-11-009	Resource Adequacy Rulemaking (2021-2022)
A.19-11-019	PG&E Phase II GRC
R.20- 05-003 - 2020	IRP Rulemaking
A.20-06-XXX	PG&E Regionalization Application (<i>to be filed by June 30, 2020</i>)
A.20-XX-XXX (TBD)	2021 PG&E Energy Resource and Recovery Account Forecast Proceeding (c. July 2020)
A.20-02-009	2019 PG&E Energy Resource and Recovery Account Compliance Proceeding
A.20-XX-XXX (TBD)	ERRA Trigger Application
A.20-XX-XXX (TBD)	(Potential) PCIA Undercollection Balancing Account Trigger Application
R.20-XX-XXX (TBD)	Rulemaking on Provider of Last Resort (anticipated later in 2020)

Note re Regulatory Advocacy: Since the vast majority of VCEA’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others during 2020, the need for drafting of motions for party status, pleadings, discovery requests or responses thereto, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCEA on CalCCA or other CCA joint filings; attending CalCCA-related calls other than the monthly regulatory call; or attending hearings, workshops or meetings with regulators is anticipated to be very limited at this time. To the extent VCEA requires such work, that work, and any associated expenses, travel, and time spent filing and serving documents, shall be considered “Extra Work” pursuant to Section 4.5 of this Agreement and invoiced at the hourly rates listed in Exhibit D.

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract commences on July 1, 2020 and runs through June 30, 2021.
The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT C

EXHIBIT D

PAYMENT

Subject to adjustments necessary for the minimum set fee related to Task 3 and the do-not-exceed levels related to Tasks 1-4 (“Do-Not-Exceed”) below, all work in 2020 will be performed at the hourly billing rates set forth below as “Keyes & Fox LLP 2020 Hourly Rates”. Historically, rate increases have been between 5-8% per year.

Keyes & Fox LLP (“K&F”) will invoice Valley Clean Energy Alliance (“VCEA”) monthly. K&F will keep an hourly total of any time spent on VCEA matters. K&F invoices will list the matter worked on and provide information on the dates of service, time involved, attorney or other personnel responsible and activity undertaken. Any unpaid amounts after forty-five (45) days will accrue interest at a rate of nine percent (9%) per annum. All fees for services will be earned as of the time of invoicing.

Expenses, travel time, and time for filing and service are included in the fee structure outlined below unless they are associated with “Extra Work” pursuant to Section 4.5 of this Agreement and, in that case, will be billed at cost (for expenses) or at the billable rates below (for time spent travelling, filing and serving).

Services Keyes & Fox LLP Will Provide	Fee Structure
<p><u>Task 1:</u> Maintain a calendar of regulatory compliance filing obligations and deadlines and provide a weekly snapshot highlighting upcoming filing dates and responsibilities. The weekly snapshot includes CPUC, CAISO, CEC, CARB, and U.S. EIA compliance deliverables.</p>	<p>Billed hourly with a Do-Not-Exceed of \$6,800</p>
<p><u>Task 2:</u> Review compliance filings after they are prepared by SMUD to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) RPS Compliance Report; (2) Revised 2019 RPS Procurement Plan; (3) 2020 RPS Procurement Plan; (4) 2020 IRP; (5) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (6) Monthly Load Migration Forecast (12 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total). Once complete, K&F will submit the (1) RPS Compliance Report (2) RPS Procurement Plan and (3) IRP filings to appropriate regulatory authorities on behalf of VCE.</p>	<p>Billed hourly with a Do-Not-Exceed of \$44,000</p>
<p><u>Task 3:</u> Support VCEA staff team as its expert regulatory resource by (i) participating in California Community Choice Association’s (“CalCCA’s”) weekly regulatory call to keep abreast of positions and activities and informing VCEA of any proceedings that will directly impact VCE in a way that CalCCA is not directly addressing, (ii) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCEA in a timely manner of issues arising in those proceedings that will critically impact VCEA, and attending monthly Board Meetings to explain such issues, if necessary, and (iii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCEA’s compliance obligations.</p>	<p>\$6,000/month minimum set fee with (a) time spent above the \$6,000 billed hourly and (b) an aggregate Do-Not-Exceed of \$120,000</p>

Services Keyes & Fox LLP Will Provide	Fee Structure
<p><u>Task 4:</u> Review contracts entered between VCEA and SMUD and VCEA and third parties. K&F understands many of the key contracts between VCEA and SMUD have already been executed and that the need for additional contracting with SMUD and third parties will be limited, so K&F proposes setting aside a small portion of the total budget for this item.</p>	<p>Billed hourly with a Do-Not-Exceed of \$10,000</p>

Note re Regulatory Advocacy: Since the vast majority of VCEA’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others, the need for drafting of motions for party status, pleadings, discovery requests or responses thereto, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCEA on CalCCA or other CCA joint filings; attending CalCCA-related calls other than the monthly regulatory call; or attending hearings, workshops or meetings with regulators is anticipated to be very limited at this time. To the extent VCEA requires such work, that work, and any associated expenses, travel, and time spent filing and serving documents, shall be considered “Extra Work” pursuant to Section 4.5 of this Agreement and invoiced at the hourly rates listed herein.

K&F and VCEA will review the Do-Not-Exceed amounts set forth above upon a request from either VCEA or K&F for such a review. Any changes to the Do-Not-Exceed amounts resulting from such review shall not affect the amount of any fees already earned.

Keyes & Fox LLP 2020 Hourly Rates

It is K&F's policy to adjust hourly rates for all personnel at the beginning of the calendar year. Rates quoted here are 2020 rates.

ATTORNEYS

Kevin Fox	360
Tim Lindl	295
Sheridan Pauker	350*
Scott Dunbar	245
Julia Kantor	225
Melissa Birchard	220
Beren Argetsinger	210

*\$385 for compliance/transactional matters

NON-ATTORNEYS

Miriam Makhyoun	185/260**
Amanda Vanega	180
Justin Barnes	180/260**
Charlie Coggeshall	180
Ben Inskeep	145/200**
Blake Elder	120
Vanessa Luthringer	95
Alicia Zaloga	90

** expert witness rates

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: VCE Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Approval of Amendment 2 to the Pacific Policy Group Agreement for lobbying services extending the term for one year and increasing the contract amount

DATE: June 11, 2020

RECOMMENDATION

Authorize VCE's Interim General Manager to execute an amendment to the Pacific Policy Group ("PPG") Agreement for lobbying services extending term one-year effective July 1, 2020 terminating June 30, 2021 for a not to exceed amount of \$60,000.

BACKGROUND

During VCE's first year of operations, there were several legislative bills identified in the 2017-2018 Legislative session that posed significant issues for CCA's. Although VCE participates in the joint CalCCA Legislative group for monitoring of legislative bills that may have significant impact on CCA's, VCE did not have a lobbying and consulting firm that would provide legislative advocacy services for VCE's specific interests.

On February 1, 2019 an agreement with PPG was entered into for lobbying services with an expiration date of January 31, 2020 and a not to exceed amount of \$60,000. As of February 1, 2020, VCE has expended the \$60,000. On March 12, 2020, Amendment 1 to the agreement was approved which extended the term through June 30, 2020 and increased the contract by \$25,000 to a not to exceed amount of \$85,000 to cover the costs for the months of February 2020 through June 2020. This contract will expire on June 30, 2020.

As VCE enters into the core of this extraordinary 2020-2021 Legislative session, staff believes the continuance of VCE's direct engagement in the legislative process is needed as key energy Bills are introduced and move through the process. In order to be effective and have a voice in the process a lobbying presence in Sacramento is necessary. Staff has been satisfied with PPG's performance, responsiveness, and professionalism and is therefore recommending an extension of the existing contact for lobbying services.

The costs for this agreement for lobbying services is budgeted in the FY2020-2021 operating budget.

CONCLUSION

Staff recommends to the Board that the agreement be effective July 1, 2020 expiring on June 30, 2021 and be increased to a not to exceed amount of \$60,000.

Attachments:

1. Amendment Two
2. Resolution

AMENDMENT NO. TWO (2)
TO THE ENERGY ADVISORY SERVICES
CONSULTANT AGREEMENT
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
PACIFIC POLICY GROUP, LLP

1. Parties and Date.

This Amendment No. Two (2) to the Energy Advisory Services Agreement is made and entered into as of 1st day of July 2020, by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California (“VCEA”) and Pacific Policy Group, a Limited Liability Partnership (“PPG”). VCEA and PPG are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 VCEA and PPG entered into a consultant services agreement effective February 1, 2019 for the purpose of retaining PPG to provide energy advisory services, including lobbying services, described in the Agreement. (“the “ Agreement”) and extended this Agreement, by Amendment No. 1, from March 31, 2020 through June 30,2020.

2.2 Amendment Purpose. VCEA and PPG desire to amend the Agreement to extend the term through June 30, 2021 and increase the not to exceed amount under the Agreement.

3. Terms.

3.1 Amendment. Sections 1.4 Term and 4.1 Compensation of the Agreement are hereby amended in their entirety to read as follows:

1.4 Term. The term of this Agreement which began on February 1, 2019 and has been extended through June 30, 2020 shall be extended and shall continue from July 1, 2020 through June 30, 2021 or when terminated as provided in Article 5.

3.2 Compensation. This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation for the period July 1, 2020 through June 30, 2020 shall not exceed Sixty Thousand (\$60,000) without written approval of VCEA. Extra work may be authorized,

as described in the Agreement, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. Two (2), all other provisions of the Energy Advisory Services Agreement remain in full force and effect and shall govern the actions of the parties. From and after the date of this Amendment No. Two (2) whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Two (2).

3.6 Severability. If any portion of this Amendment No. Two (2) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. TWO (2) as of the _____ day of June 2020.

VALLEY CLEAN ENERGY ALLIANCE

PACIFIC POLICY GROUP, LLP

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: Principal and Co-founder

Printed Name: Mark Fenstermaker

APPROVED AS TO FORM:

By: _____
Harriet Steiner
VCEA Attorney

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT TWO (2) TO THE PACIFIC POLICY GROUP AGREEMENT FOR LOBBYING SERVICES AND AUTHORIZING THE VCE INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT

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; and,

WHEREAS, during VCE’s first year of operations, there were several legislative bills identified in the 2017-2018 Legislative session that posed significant issues for CCAs;

WHEREAS, VCE participates in the joint CalCCA Legislative group for monitoring of legislative bills that may have significant impact on CCA’s, however VCE did not have a lobbying and consulting firm that provided legislative advocacy services for VCE’s specific interests;

WHEREAS, on February 1, 2019 an agreement was entered into between VCE and Pacific Policy Group, LLP, (“PPG”) for lobbying services, said agreement expired on January 31, 2020; and,

WHEREAS, on March 12, 2020, Amendment 1 to the agreement was approved which extended the term through June 30, 2020 and increased the contract by \$25,000 to a not to exceed amount of \$85,000 to cover the costs for the months of February 2020 through June 2020.

NOW, THEREFORE, the VCE Board of Directors hereby authorizes the VCE Interim General Manager to execute on behalf of VCE Amendment Two (2) to the PPG Agreement for lobbying services extending term for one year effective July 1, 2020 terminating June 30, 2021 for a not to exceed amount of \$60,000, as set forth in the attached Exhibit A – Amendment Two (2) to PPG’s Agreement.

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: Exhibit A - Amendment Two (2) to Pacific Policy Group Agreement

Exhibit A

Amendment Two (2) to Pacific Policy Group Agreement

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Valley Clean Energy Alliance (VCE) Board of Directors

FROM: Mitch Sears, Interim General Manager
Alisa Lembke, VCE Board Clerk/Administrative Analyst

SUBJECT: Reappointment/appointment of Community Advisory Committee Members

DATE: June 11, 2020

Recommendations

1. Reappoint the following Community Advisory Committee (CAC) Members for a three (3) year term to expire 2023:
 - a. County of Yolo – Marsha Baird
 - b. City of Woodland – Christine Shewmaker
 - c. City of Davis – Gerry Braun

2. Appoint the candidates/member listed below for the following terms:
 - a. City of Winters – David Springer (currently in Yolo County seat) / Term to expire June 2022
 - b. City of Winters – Jennifer Rindahl / Term to expire June 2023
 - c. City of Winters – Peter Meyer / Term to expire June 2021

Background

The VCE Board of Directors on December 13, 2016 via Resolution #2016-006 formed a Community Advisory Committee (CAC); on September 13, 2018, the Board approved the terms of service and officer position of members who serve on the Community Advisory Committee; and on October 18, 2018, the Board approved a three-year term for Community Advisory Committee members, how to determine the terms of service of current CAC members, and criteria for new member recruitment and selection.

On November 15, 2018 the Board adopted Resolution 2018-030 which summarized VCE’s recruitment and appointment process to the CAC and appointed Members. This process included an initial staff review for completeness followed by review by the Board subcommittee and recommendation to the full Board.

In December 2019, the Board approved the City of Winters as a member of VCE. A condition of membership was to help identify community representatives to serve on VCE’s Community Advisory Committee (CAC). CAC Member David Springer, currently representing Yolo County, is a resident of the City of Winters. Mr. Springer has expressed his interest in representing the City of Winters on the CAC and to complete his three (3) term, expiring in June 2022.

In May 2020, two applications for appointment were received from residents of the City of Winters: Jennifer Rindahl and Peter Meyer. Staff forwarded them to the Board subcommittee for review and is being presented to the Board for recommendation of appointment.

In her application Ms. Rindahl expressed an interest in serving on the CAC based on her more than 20 years of experience working with local agencies and districts to help communicate important issues about local services to the public and her work as Director of Advocacy at the UC Davis Division of Agriculture and Natural Resources which expanded her knowledge of sustainability issues.

In his application Mr. Meyer's expressed an interest in serving on the CAC based on his experience working in the power industry and his interest in bringing cleaner energy to Yolo County communities.

Reappointment Applications of Existing CAC Members

Those Members whose term expires this month (Class 2) have submitted their interest to be reappointed.

CLASS 2 – term expiring June 2020

- Yolo Rep.– Marsha Baird
- Woodland Rep. – Christine Shewmaker
- Davis Rep.– Gerry Braun

If those mentioned above are reappointed/appointed, below is a listing of the “class” and expiration term:

CLASS 3 – term expiring June 2021

- Yolo Rep.– Vacant
- Woodland Rep. - Christine Casey
- Davis Rep.– Lorenzo Kristov
- Winters Rep. - Peter Meyer

CLASS 1 – term expiring June 2022 (reappointed on 6/17/19)

- Yolo Rep. – Vacant due to David Springer representing the City of Winters
- Woodland Rep. – Mark Aulman
- Davis Rep.– Yvonne Hunter
- Winters Rep. – David Springer

CLASS 2 – term expiring June 2023

- Yolo Rep.– Marsha Baird
- Woodland Rep. – Christine Shewmaker
- Davis Rep.– Gerry Braun
- Winters Rep. – Jennifer Rindahl

This will leave two vacancies for Yolo County. To date, the advertisement for these two vacancies are on the VCE website.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 17

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: June 11, 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 20 years of the Rugged Solar Project under development by Rugged Solar LLC (Rugged).
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.

Recently there have been concerns raised by project area local labor representatives on whether or not the developer is planning to follow the commitments made in 2013 under AB 900. Staff has been working with the developer and local labor to arrive at an agreeable solution. The developer has agreed to abide by all applicable commitments under AB 900 as well as to enter into a Project Labor Agreement (PLA) to construct the Rugged solar facility. Rugged and the Labor organization that identified this issue (IBEW Local 569), have

communicated with VCE that each are satisfied with assurances that Rugged will adhere to the original AB 900 certifications for the Rugged Solar project. Final agreements with the remaining labor trades potentially involved in the project construction are pending. Based on these communications staff is recommending Board approval of the Rugged PPA.

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. 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.

Note: due to potential COVID impacts on construction processes, staff is anticipating the possibility that some schedule milestones may shift. Provided overall guaranteed power delivery dates do not change, staff would consider these minor schedule shifts on a case-by-case basis and to be within its authority to make minor changes under the recommended Board approvals and authorizations. Changes to the guaranteed delivery date or PPA price would be brought back to the Board for consideration.

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 Deliverability 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 VCEA's annual energy retail needs. Table 2 below shows the anticipated combined annual 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					
<i>Rugged</i>	12/1/2021	72 MWs	11,587	222,820	221,706
<i>Aquamarine</i>	8/1/2021	50 MWs	47,438	134,684	134,011
<i>Project 2 Phase 2</i>	12/1/2021	0 MWs	0	0	0
<i>Project 2 Option</i>	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.

Attachments

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

Attachment A
Rugged Power Purchase Agreement

RUGGED SOLAR
POWER PURCHASE AGREEMENT

between

VALLEY CLEAN ENERGY ALLIANCE

(as “Buyer”)

and

RUGGED SOLAR LLC

(as “Seller”)

dated as of

April 10, 2020

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....	1
1.1 Definitions.....	1
ARTICLE 2 SALE AND PURCHASE OF ENERGY.....	16
2.1 Purchase and Sale of Energy.....	16
2.2 Contract Price.....	16
2.3 Dedication of Product to Buyer.....	17
2.4 Purchase and Sale of Green Attributes; Tax Credits.....	18
2.5 New Generation Facility.....	19
2.6 Commercial Operation.....	21
2.7 Title; Risk of Loss.....	22
2.8 Transmission; CAISO Payments and Charges; Curtailment.....	22
2.9 Scheduling; Forecasting; EIRP; Outage Notification.....	24
2.10 Capacity Rights.....	27
2.11 Sales for Resale.....	27
ARTICLE 3 TERM; TERMINATION; DEFAULTS	28
3.1 Term.....	28
3.2 Regulatory Approvals; Certifications; Qualifications.....	28
3.3 Compliance Expenditure Cap.....	29
3.4 Defaults; Remedies; Termination Payment.....	30
3.5 Specific Performance; Injunctive Relief.....	32
3.6 Seller’s Financial Support Obligations.....	32
ARTICLE 4 BILLING AND PAYMENT; METERING AND MEASUREMENT	34
4.1 Billing; Payment.....	34
4.2 Metering Equipment.....	36
4.3 Maintenance; Records.....	38
4.4 Electronic Communications.....	38
4.5 Environmental Contamination.....	39
ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS.....	39
5.1 Seller’s Representations and Warranties.....	39
5.2 Buyer’s Representations and Warranties.....	40
5.3 Seller’s Covenants.....	41
5.4 Buyer’s Covenants.....	41
5.5 Guaranteed Energy Production; Full Capacity Deliverability Status.....	43
5.6 Access Rights.....	45
5.7 Facility Images.....	45
ARTICLE 6 INDEMNIFICATION AND INSURANCE.....	45
6.1 Indemnity.....	45
6.2 Insurance.....	46
ARTICLE 7 GOVERNMENT APPROVALS.....	48
7.1 Government Approvals – Seller’s Obligation.....	48
7.2 Government Approvals – Buyer’s Obligation.....	48
7.3 Changes In Law.....	48
ARTICLE 8 MISCELLANEOUS.....	49
8.1 Confidential Information.....	49
8.2 Successors and Assigns; Assignment.....	51

8.3	Lender Rights.....	51
8.4	Notices.....	52
8.5	Force Majeure.....	53
8.6	Amendments.....	54
8.7	Waivers.....	54
8.8	Waiver of Certain Damages.....	54
8.9	No Recourse to Buyer’s Members.....	55
8.10	Survival.....	55
8.11	Severability.....	55
8.12	Standard of Review.....	55
8.13	Governing Law.....	56
8.14	Consent to Jurisdiction.....	56
8.15	Waiver of Trial by Jury.....	57
8.16	Disputes.....	57
8.17	No Third-Party Beneficiaries.....	57
8.18	No Agency.....	57
8.19	Cooperation.....	57
8.20	Further Assurances.....	58
8.21	Captions; Construction.....	58
8.22	Entire Agreement.....	58
8.23	Counterparts.....	58
8.24	Forward Contract.....	58

Exhibit A	Contract Price
Exhibit B	Description of Facility
Exhibit B-1	Facility Site Plan
Exhibit C	Description of Delivery Point and One-Line/Metering Diagram
Exhibit D	[Reserved]
Exhibit E	Form of Consent (Financing)
Exhibit F	Minimum Annual Energy Production
Exhibit G	Form of Letter of Credit
Exhibit H	Expected Energy
Exhibit I	Milestone Schedule
Exhibit I-1	Form of Milestone Schedule Report
Exhibit J	Form of Commercial Operation Certificate

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”.

WITNESSETH:

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.

“Curtailed 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 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 Seller'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 (10th) 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 (20th) 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 (20th) 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 to 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) Buyer's Reporting of Financial and Credit Information. 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 \$█/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
 c/o Clean Focus Renewables, Inc.
 150 Mathilda Pl # 106
 Sunnyvale, CA 94086
 Attn: Legal
 Telephone: (408) 329-9280
 Email: legal@greenskies.com

If to Buyer: Valley Clean Energy Alliance
 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:

\$ [REDACTED] /MWh until Seller obtains Full Capacity Deliverability Status;
or

\$ [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 the 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 sun that rotate East-West to track the sun. Trackers would be arranged around inverter stations.

A collection system linking the trackers to the on-site substation would consist of 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:

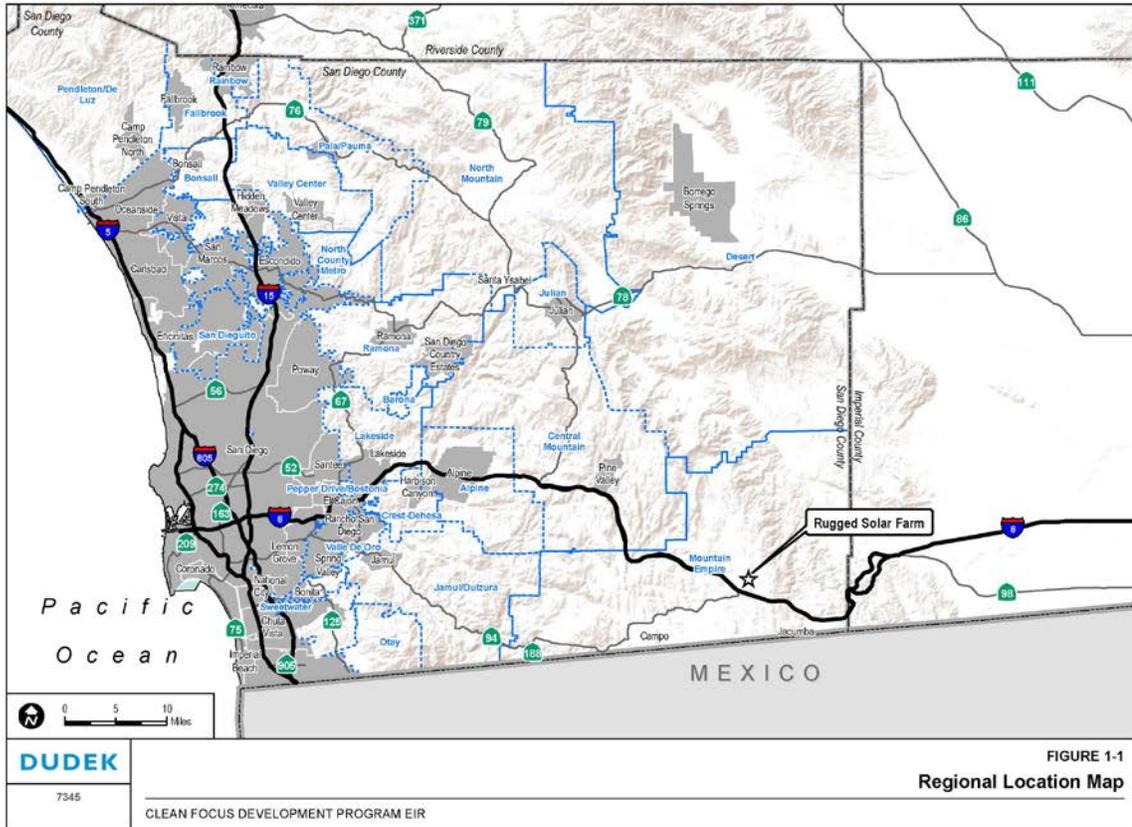


FIGURE 1-1
Regional Location Map

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:

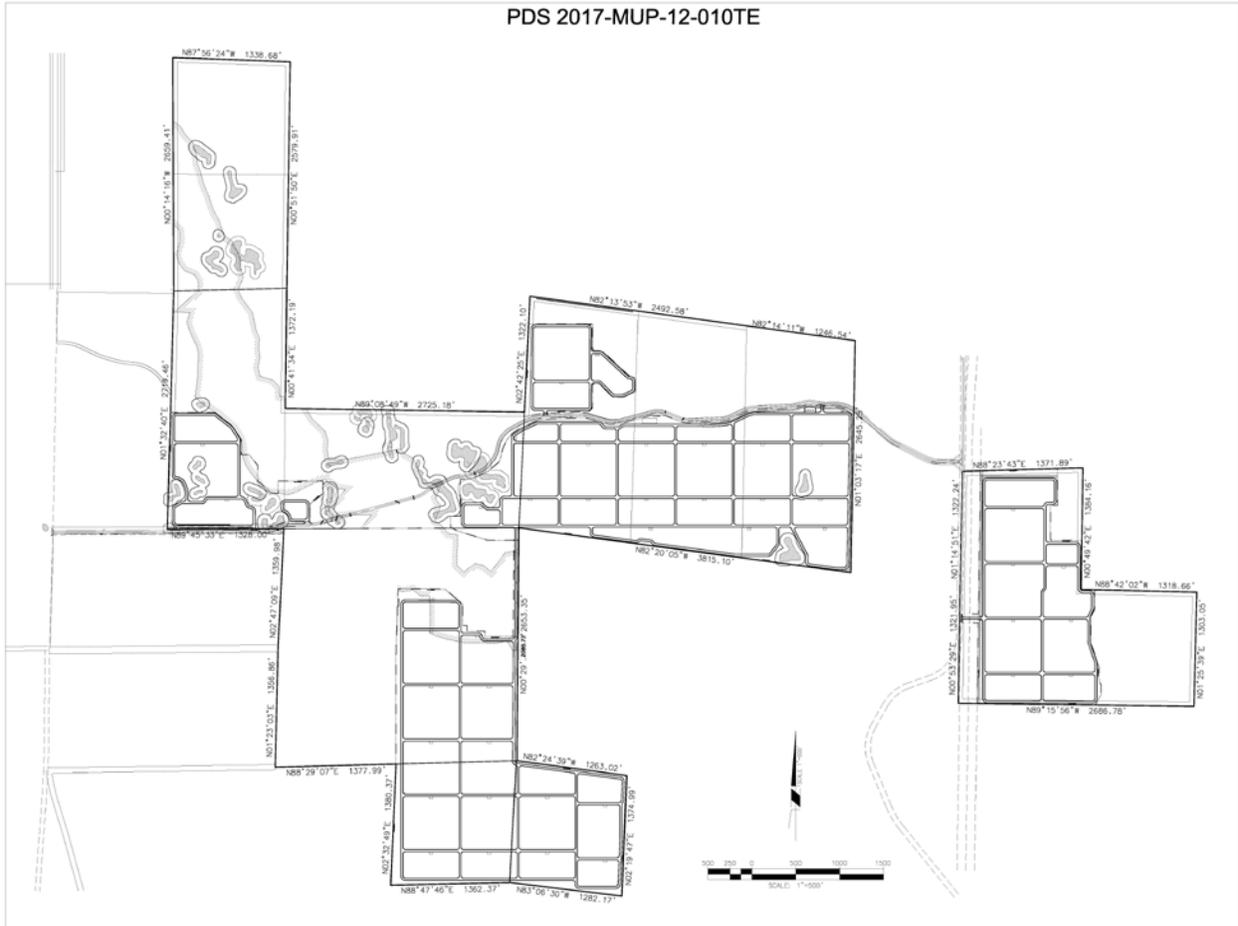


EXHIBIT C

DESCRIPTION OF INTERCONNECTION POINT, DELIVERY POINT, AND ONE-LINE/METERING DIAGRAM

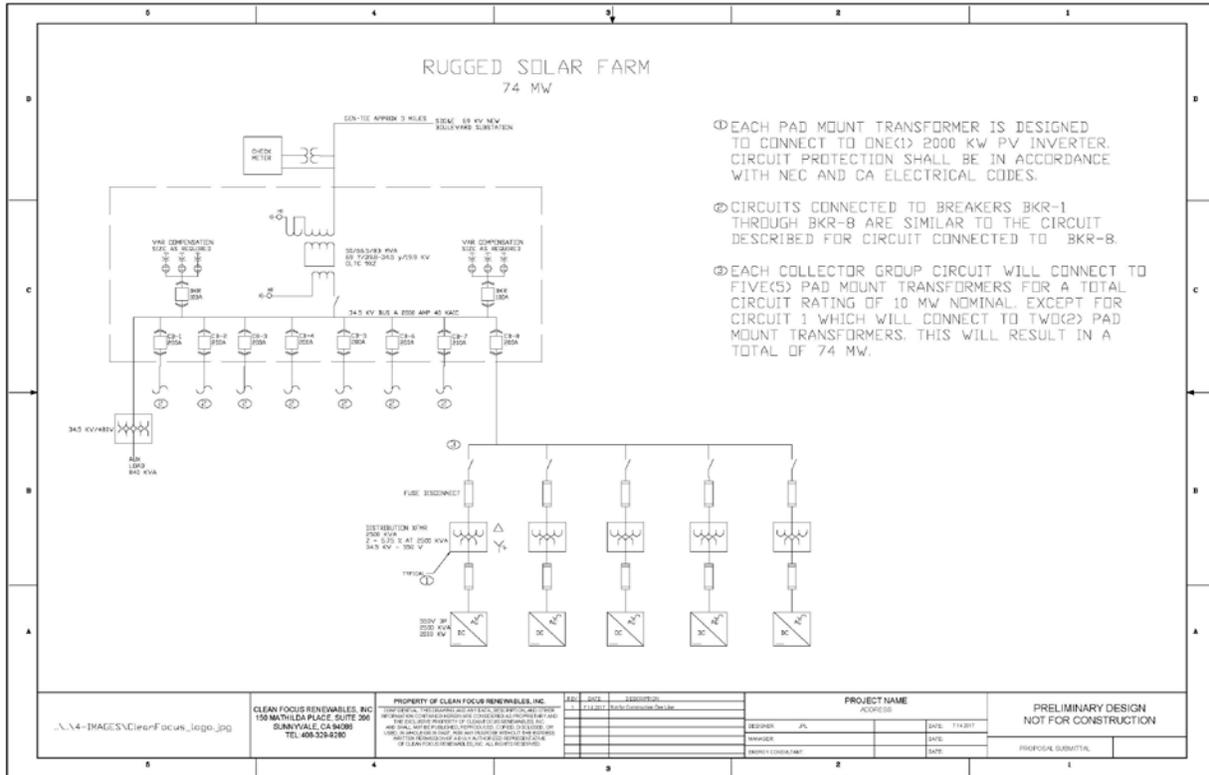


EXHIBIT D
[RESERVED]

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:

Assigned Agreement

Disputes and Amounts Due and Unpaid under the Assigned Agreement
(Section 7(b)(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

EXHIBIT G
LETTER OF CREDIT

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

[DATE OF ISSUANCE]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: [Contact Person]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

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. Stated Amount. 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. Drawings. 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 [*ISSUING BANK*], 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 *paragraph 9* hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B 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 [*ISSUING BANK*] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* below). In the event of a presentation by facsimile transmission, the original of such documents shall be sent to us by overnight mail.

3. Time and Method for Payment. 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.
2. The Interim General Manager and/or his designee is authorized to execute and take all actions necessary to implement 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

Staff Report – Item 18

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Power Director
George Vaughn, Director of Finance & Internal Operations
Jennifer Archuleta, SMUD

SUBJECT: Policy Strategy Adjustments for Fiscal Year 2020/21

DATE: June 11, 2020

RECOMMENDATIONS

1. Adopt policy strategies to plan for incorporation of long-term renewable contracts into VCE's portfolio and to address fiscal year 2020/21 PCIA and Resource Adequacy cost impacts.
2. Direct Staff and the Community Advisory Committee to study additional customer rate choices for future Board consideration.

BACKGROUND

As analyzed and reported to the Board since mid-2018, changes by the CPUC to the Power Charge Indifference Adjustment (PCIA) and Resource Adequacy (RA) mandates have created volatility and uncertainty for CCA programs across the State. Inadequate transparency related to such large and unforecastable swings in the PCIA means that CCA's must be more defensive in their financial posture going forward. Therefore the primary drivers for the policy recommendations contained in this report are: (1) the objective of aligning VCE's power procurement efforts, (2) the increasing/unpredictable PCIA, and (3) volatility in RA power pricing due in part to CPUC market design efforts. These recommended policy adjustments will partially counter the negative impacts that an increasing and volatile PCIA and more costly RA market have on VCE's finances so that VCE is in a better position to maintain competitive rates and clean power content for its customers while meeting its baseline financial obligations.

Reports and presentations over the past several Board and Community Advisory Committee (CAC) meetings have outlined the preliminary Fiscal Year (FY) 2020/21 budget and a range of potential policy strategies to address alignment of short and long-term renewable contracts and the forecasted FY 2020/21 budget shortfall. Based on its analysis and feedback from the Board and CAC, staff developed a set of recommended policy strategy adjustments to incorporate long-term renewable contracts into the VCE portfolio, address fiscal year 2020/21 PCIA and Resource Adequacy cost impacts, and study the potential of additional customer rate choices.

Note: the analysis for the FY 2020/21 Budget (Board Agenda Item 19), incorporates the actions recommended in this report.

CAC Recommendation

At its May 28, 2020 meeting the CAC voted unanimously to support the staff recommendations. The motion for supporting the additional rate choice recommendation included a provision that the study allow for analysis of a range of options; this is consistent with staff's recommendation. Staff would note that as at previous Board and CAC meetings, the Committee acknowledged in its discussion that its recommendations represent a difficult, though temporary policy balance addressing impacts largely outside the control of VCE.

ANALYSIS

The recommended policy strategies address two primary issues: (1) efficient incorporation of long-term renewable contracts into VCE's power portfolio and (2) addressing the forecasted FY 2020/21 budget shortfall. Of the range of policy options considered at previous meetings, both the Board and CAC provided feedback supporting the acceptance of large-hydro clean attributes from PG&E and adjustments to VCE's power resource planning strategy. In addition, the Board and CAC both supported the study of additional rate choices for customers. The recommended policy adjustments are outlined below.

Alignment of Power Contracts – Power Planning Resource Adjustments

As the Board has discussed over the past several years, newly launched CCA's typically utilize short-term renewable power contracts to establish service and to allow time to transition to longer term renewable contracts over the first 2-3 years. This "on-ramp" approach allows for more flexibility as customer load settles into a relatively steady state over the first few years of operations and to build a financial track record putting the CCA in a better position to secure long-term renewable contracts (i.e. large scale solar PPAs).

VCE has followed this path with its first two long-term renewable Power Purchase Agreements (PPA's) for approximately 122 Megawatts of solar energy anticipated to begin delivering energy and associated RA in mid-2021. This is three years after VCE began serving customers. Once fully delivering, these long-term renewable contracts will provide approximately 50% of VCE's current energy requirements (this is one of the highest rates in the State for any electricity provider). Consistent with VCE's overall power planning objectives, these PPA's will displace more expensive existing short-term renewable contracts (PCC1) and GHG free resources. To avoid duplicative power purchases and increase efficiency, staff analyzed the timing of these power deliveries in 2021 and when to dial back the existing short-term contracts. Analysis showed that aligning the start and end dates of these short-term contracts may result in a temporary period where overall renewable and GHG levels in VCE's portfolio are much lower in the initial year but would average 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. Based on staff analysis, these power resource planning adjustments result in net avoided costs over this 2 to 3 year period while still meeting VCE's regulatory compliance requirements.

As shown in Table 1 below, staff analyzed several alternatives to weigh short-term trade-offs

between the levels of renewable/clean content in VCE’s portfolio and potential avoided procurement costs. Analysis of the potential avoided costs, 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 measured over multiple years. Based on the analysis summarized in the table below, staff is recommending Alternative 2 to align with VCE’s goals over the next several years. Note: 2020 contracts for RPS and large-hydro are not effected by this recommendation.

Table 1 – Power Planning Resource Policy Options

Policy Option – Power Planning Resource Adjustments	2021 RPS Levels	2021 Large Hydro	2021 Carbon-Free	FY20/21 Estimated Avoided Cost
Base Case (existing policy)	42%	33%	75%	\$0
Alt 1 (Low RPS/Large-hydro)	6%	5%	11%	\$2.50 - \$3.00 million
Alt 2 (Moderate – Approx. 25% Base Case) - Recommended	10%	10%	20%	\$2.00 - \$2.50 million
Alt 3 (Moderate – Approx. 50% Base Case)	24%	14%	38%	\$1.25 - \$1.75 million
Alt 4 (Large Hydro Emphasis)	6%	44%	50%	\$1.50 - \$2.00 million

As detailed in the FY2020/21 budget adoption staff report (Agenda item 19), VCE is forecasting a \$5.2 million net loss for FY2020/21 if no mitigating actions are taken. The recommended policy adjustment actions total approximately \$2.375 million in avoided costs and are comprised of:

- Power Resource Planning Adjustment of \$2.25 million (mid-range of Alternative 2 in Table 1 above)
- Large Hydro allocation of \$125,000 (previous Board action to accept PG&E large hydro allocations for 2020)

With these recommended policy adjustments, the FY 2020/21 net loss is reduced by approximately 46% from \$5.2 million to approximately \$2.8 million. Staff believes this approach achieves an appropriate balance between VCE’s power planning and fiscal objectives based on the following factors:

- It helps efficiently align power planning timelines to avoid duplicative power purchases and allows VCE to achieve its clean power goals averaged out over a 2-3 year period;
- In combination with reserves, it helps stabilize customer rates by addressing a known, immediate need (fiscal impact in FY2020/21);
- The approach of utilizing the Power Resource Planning Adjustment has a “shelf life,” meaning the impact diminishes the longer the delay in implementing it;
- The estimated \$2.375 million in avoided costs would help VCE partially address potential negative cash balances in the future and can be accomplished while still adhering to VCE goals and compliance standards;
- Although VCE currently has a \$7 million RLOC available, VCE is reluctant to utilize it for

rate stabilization purposes;

- It provides additional fiscal stability as the PCIA moderates in future years (i.e. Diablo Canyon removed from PCIA costs in 2024/25) and lower cost long-term renewable PPA's come on-line.

Staff does note that while VCE currently maintains an \$11 million dollar cash reserve, a \$7 million dollar RLOC, and anticipated stabilization of net income in FY 2022/23, risk remains. If the recommended policy adjustments are adopted, the fiscal model estimates an approximate \$6 million dollar net loss for the fiscal year beginning July 2021 (FY 2021/22), before the more extreme budget impacts associated with the PCIA begin to moderate in FY 2022/23 (e.g. Diablo Canyon shut-down in 2024/25); without adoption of the policy adjustments that loss grows to approximately \$8.1 million dollars in FY 2021/22. In addition, the financial model assumes that no further significant fiscal impacts occur due to regulatory mandates outside of VCE 's control and that VCE still has access to the RLOC going forward. If these assumptions do not hold, VCE will need to consider additional policy adjustments in the future.

Additional Rate Choice

Although staff is not recommending adding a third customer choice for rates at this time, we are recommending that it be analyzed as a potential policy adjustment in late 2020/early 2021. Staff believes that an additional customer rate option could further solidify customer participation in VCE by offering more choice. As outlined in the previous Board and CAC reports, one example option for study could be a third customer rate choice set to align with minimum State standards for renewable energy content. This could 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 type of customer rate choice approach has been employed by Clean Power Alliance (LA/Ventura CCA) and several other CCA's are studying the concept of a "cost plus" rate structure. As noted, the CAC supports the recommendation to analyze a range of options and report findings back to the Board for consideration.

CONCLUSION

Staff is recommending that the Board approve policy strategy adjustments to plan for the efficient incorporation of long-term renewable contracts into VCE's portfolio and to address fiscal year 2020/21 PCIA and Resource Adequacy cost impacts. Staff is further recommending the study of rate choice options for future Board consideration. For reference, the May 14, 2020 Board Report outlining the range of policy strategy options is attached.

ATTACHMENT

1. Board Report – May 14, 2020

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

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

RECOMMENDATION

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.

Preliminary 2021 Budget Key Assumptions/Factors

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

Impacts of Various COVID & Recession Impacts

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.

Budget Impact Summary

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.

Section 3. Potential Policy Strategies

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 11th.

Community Advisory Committee Consideration

The Community Advisory Committee (CAC), considered and provided initial feed-back on the policy strategies at their April 23rd 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.

Policy Strategy Options

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 11th 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 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 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 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 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 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 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	<u>46,396</u>	<u>45,491</u>	<u>54,790</u>
 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)	<u>(23)</u>	<u>(9)</u>	<u>78</u>
 NET MARGIN	 \$ 9,289	 \$ 9,441	 \$ (5,199)
NET MARGIN %	<u>16.7%</u>	<u>17.2%</u>	<u>-10.5%</u>

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 19

TO: Valley Clean Energy Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

SUBJECT: Operating Budget Fiscal Year 2020/2021

DATE: June 11, 2020

RECOMMENDATION

Adopt a resolution approving the Operating Budget of \$49.6M of operating revenues and \$52.6 M of operating expenses for fiscal year 2020-2021 (FY2021).

BACKGROUND AND ANALYSIS

This staff report presents two budgets for consideration by the Board:

- Budget Option 1: Staff-recommended budget reflecting a \$2.8 million loss, which includes \$2.4 million in recommended policy adjustments to help mitigate an otherwise higher loss. These recommended policy adjustments are detailed in Board Agenda item 18 of this June 11, 2020 meeting;
- Budget Option 2: Alternative “business as usual” budget reflecting a \$5.2 million loss, which does not include any mitigating policy adjustments by the Board.

Operating Budget FY 2019/2020

In June 2019, the Board approved the Operating Budget of \$46.4 M for fiscal year 2019-2020 (FY2020) and includes purchased power and other operating expenses. The operating budget was based on the following key factors:

- VCEA rates set to match PGE&E’s generation rates, net of PCIA and Franchise Fees
- Power Mix of 42% renewable, 75% clean for the default Standard Green energy product
- Contingency of 5% of other operating expenses

Year to Date Actual plus Forecast

The year to date (YTD) actual operating expenses for the 10 months ending April 30, 2020 plus the forecast for the remaining part of fiscal year FY2020 are very slightly below the approved budget mainly due to the following:

- Power Costs increased < 1% due to increasing power procurement cost per kWh offset by lower than budgeted customer load
- Offsetting the power cost increase is a 7% decrease in other operating costs compared

to budget, due to reduction in VCE staffing, SMUD contracting, and legal costs

- The budgeted 5% contingency has largely been utilized to cover the unbudgeted costs of the PG&E local distribution system acquisition-related expenses

Budget Option 1: FY 2020/2021

Table 1 – Budget Option 1 (Recommended)

VALLEY CLEAN ENERGY			
BUDGET SUMMARY			
FY2021 - BUDGET OPTION 1	APPROVED BUDGET	ACTUAL YTD	PRELIMINARY BUDGET
	FY 2019-2020	APR 30, 2020 (10 MO) + FORECAST (2 MO) FY 2019-2020	FY 2020-2021
OPERATING REVENUE	\$ 55,708	\$ 55,122	\$ 49,638
OPERATING EXPENSES:			
Cost of Electricity	41,575	41,844	47,670
Contract Services	2,910	2,876	2,982
Staff Compensation	1,183	1,065	1,132
General, Administration and other	728	524	772
TOTAL OPERATING EXPENSES	46,396	46,309	52,555
TOTAL OPERATING INCOME	9,312	8,813	(2,917)
NONOPERATING REVENUES (EXPENSES)			
Interest income	132	105	135
Interest expense	(155)	(111)	(57)
TOTAL NONOPERATING REV/(EXPENSES)	(23)	(6)	78
NET MARGIN	\$ 9,289	\$ 8,807	\$ (2,839)
NET MARGIN %	16.7%	16.0%	-5.7%

The staff recommended Budget Option 1 reflects a loss of \$2.8 million. Included are the following assumptions:

- VCE’s most current load forecasts are reflected, which include substantial reductions in load and revenue related largely to COVID and associated recessionary factors
- Consistent with current policy, VCE will match PG&E’s generation rates – which are expected to increase 1.5% overall in 2020 and 2.0% in 2021
- PCIA is significantly higher in FY2021 budget than prior year – including an increase to the PCIA cap of approximately 3.2 cents per kWh in May 2020 and a further increase to 4.4 cents per kWh in 4th quarter 2020 due to an expected cap exception trigger
- Power costs are \$6.1 million higher than FY2020 budget – due primarily to increasing Resource Adequacy (RA) costs and an anticipated delay in generation from pending long-term solar projects
- Budget reflects the inclusion of two policy options recommended by staff and the CAC which partially mitigate the financial loss:
 - Power Planning Resource Adjustment, which is expected to lower power purchase costs by \$2.25 million (already reflected in the \$6.1 million increase in power costs noted above)
 - Accepting large hydro allocations from PG&E, which is expected to net \$125,000 for VCE

- Other operating expenses (not including power costs) are nearly flat to FY2020 budget, reflecting only a 1.3% increase – lower than CPI

Rates and Revenue – VCE’s current rates policy is to match PG&E’s generation rates for its default energy product. The revenue budget is based on the following assumptions:

- PG&E generation rates will increase by an overall average of 1.5% for 2020 and increase 2% for 2021
- PCIA will be significantly higher in FY2021 budget than prior year – including an increase to the PCIA cap of approximately 3.2 cents per kWh in May 2020 and a further increase to 4.4 cents per kWh in 4th quarter 2020 due to an expected cap exception trigger

The FY2021 load and related revenue reflects significant reductions due to a variety of factors, including: (1) COVID-19 and associated recessionary load and revenue declines of 3.8% and 4.2% respectively, (2) weather patterns, (3) the latest actual load and customer count information, and (4) opt-out and opt-up rates. The retail load forecast for the FY 2021 is estimated at 677 GWh.

Power Costs/Mix – FY2021 straddles the second half of calendar year 2020 and the first half of calendar year 2021. For calendar year 2020, the power mix remains unchanged from the prior year’s budget with 42% renewable and 75% clean content. For calendar year 2021, if approved by the Board, VCE would utilize the Power Resource Planning Adjustment policy strategy – which reflects a 10% renewable and 20% clean content mix in calendar year 2021 and then increases in later years to ensure compliance with VCE goals and requirement over a two to three year period. This policy adjustment is detailed in the staff report for Board agenda item 18.

Power cost includes: (1) system energy, (2) eligible renewables and (3) carbon free attributes which are estimated at \$34.4 million, or 72.1% of the total power costs. Resource adequacy cost is forecasted at \$13.3 million, or 27.9% of the total power costs.

Other Operating Expenses – Staff has reviewed the other operating expenses and have kept these costs at a very modest increase of 1.3% over FY2020 budget. VCE updated the budget based on the following:

- Staffing reflects the inclusion of three VCE directors (AGM/Director of Power Services, Director of Customer Services & Marketing, and Director of Finance & Internal Operations) to replace SMUD staff augmentation positions, as well as a full-time limited term Program & Community Engagement Specialist position to replace the Senior Intern position; in total, VCE’s Labor & Benefits is decreasing slightly in FY2021 as the internal positions are less expensive than contract support
- Costs related to the addition of new member jurisdictions
- Services currently under contract
- Increased costs due to PG&E bankruptcy, included as part of the Contingency line item
- Slight increase in legal, regulatory and legislative support – totaling 2%
- 2.5% assumed annual inflation rate on all expenses not under contract
- 5% contingency rate for unanticipated operating expenses

Budget Option 2: FY 2020/2021

Table 2 – Budget Option 2

VALLEY CLEAN ENERGY			
BUDGET SUMMARY			
FY2021 - BUDGET OPTION 2	APPROVED BUDGET	ACTUAL YTD	PRELIMINARY BUDGET
	FY 2019-2020	APR 30, 2020 (10 MO) + FORECAST (2 MO) FY 2019-2020	FY 2020-2021
OPERATING REVENUE	\$ 55,708	\$ 55,122	\$ 49,513
OPERATING EXPENSES:			
Cost of Electricity	41,575	41,844	49,920
Contract Services	2,910	2,876	2,982
Staff Compensation	1,183	1,065	1,132
General, Administration and other	728	524	772
TOTAL OPERATING EXPENSES	46,396	46,309	54,805
TOTAL OPERATING INCOME	9,312	8,813	(5,292)
NONOPERATING REVENUES (EXPENSES)			
Interest income	132	105	135
Interest expense	(155)	(111)	(57)
TOTAL NONOPERATING REV/(EXPENSES)	(23)	(6)	78
NET MARGIN	\$ 9,289	\$ 8,807	\$ (5,214)
NET MARGIN %	16.7%	16.0%	-10.5%

Budget Option 2 reflects a loss of \$5.2 million. It is not the staff-recommended budget option. It is identical to Budget Option 1 except that it does not include the following two policy strategy adjustment options:

- Power Resource Planning Adjustment of \$2.25 million avoided energy costs
- Large Hydro allocation of \$125,000

CONCLUSION

Budget Option 2, with no mitigating Policy Actions, reflects a \$5.2 million net loss for FY2021. With the staff-recommended Budget Option 1, the FY2021 net loss is reduced by \$2.375 million (46%) to \$2.8 million. Staff believes this approach achieves a number of goals:

- It helps efficiently align power planning timelines to avoid duplicative power purchases;
- In combination with reserves, it helps stabilize customer rates by addressing a known, immediate need (fiscal impact in FY2020/21);
- The approach of utilizing the Power Resource Planning Adjustment has a “shelf life,” meaning the impact diminishes the longer the delay in implementing it;
- The estimated \$2.375 million in avoided costs would help VCE partially address potential negative cash balances in the future and can be accomplished while still adhering to VCE goals and compliance standards;
- Although VCE currently has a \$7 million RLOC available, VCE is reluctant to utilize it for rate stabilization purposes;

It provides additional fiscal stability as the PCIA moderates in future years (i.e. Diablo Canyon removed from PCIA costs in 2024/25) and lower cost long-term renewable PPA’s come on-line.

Based on these factors, staff recommends Budget Option 1.

ATTACHMENTS

1. Budget Option 1: Staff-recommended Operating Budget for Fiscal Year 2020-2021
2. Budget Option 2: Alternative Operating Budget for Fiscal Year 2020-2021
3. Board Resolution to Adopt Budget Option 1

**VALLEY CLEAN ENERGY
BUDGET SUMMARY
FY2021 - BUDGET OPTION 1**

	APPROVED BUDGET FY 2019-2020	ACTUAL YTD APR 30, 2020 (10 MO) + FORECAST (2 MO) FY 2019-2020	PRELIMINARY BUDGET FY 2020-2021
OPERATING REVENUE	\$ 55,708	\$ 55,122	\$ 49,638
OPERATING EXPENSES:			
Cost of Electricity	41,575	41,844	47,670
Contract Services	2,910	2,876	2,982
Staff Compensation	1,183	1,065	1,132
General, Administration and other	728	524	772
TOTAL OPERATING EXPENSES	<u>46,396</u>	<u>46,309</u>	<u>52,555</u>
 TOTAL OPERATING INCOME	 9,312	 8,813	 (2,917)
NONOPERATING REVENUES (EXPENSES)			
Interest income	132	105	135
Interest expense	(155)	(111)	(57)
TOTAL NONOPERATING REV/(EXPENSES)	<u>(23)</u>	<u>(6)</u>	<u>78</u>
 NET MARGIN	 \$ 9,289	 \$ 8,807	 \$ (2,839)
NET MARGIN %	<u>16.7%</u>	<u>16.0%</u>	<u>-5.7%</u>

**VALLEY CLEAN ENERGY
BUDGET SUMMARY
FY2021 - BUDGET OPTION 2**

	APPROVED BUDGET FY 2019-2020	ACTUAL YTD APR 30, 2020 (10 MO) + FORECAST (2 MO) FY 2019-2020	PRELIMINARY BUDGET FY 2020-2021
OPERATING REVENUE	\$ 55,708	\$ 55,122	\$ 49,513
OPERATING EXPENSES:			
Cost of Electricity	41,575	41,844	49,920
Contract Services	2,910	2,876	2,982
Staff Compensation	1,183	1,065	1,132
General, Administration and other	728	524	772
TOTAL OPERATING EXPENSES	46,396	46,309	54,805
 TOTAL OPERATING INCOME	 9,312	 8,813	 (5,292)
NONOPERATING REVENUES (EXPENSES)			
Interest income	132	105	135
Interest expense	(155)	(111)	(57)
TOTAL NONOPERATING REV/(EXPENSES)	(23)	(6)	78
 NET MARGIN	 \$ 9,289	 \$ 8,807	 \$ (5,214)
NET MARGIN %	16.7%	16.0%	-10.5%

RESOLUTION NO. 2020-_____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
ADOPTING THE OPERATING BUDGET FOR FISCAL YEAR 2020-2021**

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, the VCE Operating Budget Option 1 for Fiscal year 2020-2021 includes Operating Revenues totaling \$49.6M and purchased power and other operating expenses, totaling \$52.6M;

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby adopts the Operating Budget Option 1 for Fiscal Year 2020-2021.

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 20

TO: Valley Clean Energy Alliance Board of Directors

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

SUBJECT: Request for Offers Update (2020 Local RFO and RCEA/VCE Joint RFO for Incremental Resource Adequacy)

DATE: June 11, 2020

OVERVIEW

This informational staff report provides an update on two recent power resource solicitations that VCE has issued. The Local Renewable Request for Offer (“RFO”) issued on April 20, 2020 and the joint RFO with Redwood Coast Energy Authority (RCEA) for Incremental Resource Adequacy (RA) issued on April 28, 2020. In May, both solicitations closed and staff is in the process of assessing the proposals.

BACKGROUND

Local RFO

Staff received approval from the Board in April to issue the Local Renewable RFO with project screening based on the project requirements and evaluation criteria listed in the April staff report. The Local RFO is consistent with general Board direction and VCE’s Vision statement to pursue procurement of cost effective local renewable energy. This solicitation is also identified in VCE’s 2019 Renewable Portfolio Standard (RPS), Procurement Plan submitted to the California Public Utilities Commission. The 2019 RPS Plan states:

“VCE plans to establish an open solicitation for local renewables in the first quarter of 2020 in order to supply up to 25% of its targeted 2030 renewable goal of 80%.”

Proposals needed to be RPS-eligible generation or generation + storage projects in the 2-25 MWac range with a commercial operation date (COD) no later than December 31, 2023 with contract terms of ten to twenty years.

Summary of Responses

The Local RFO deadline for submitting proposals was May 26, 2020. Prior to that VCE requested bidders submit a Notice of Intent to bid which resulted in fourteen entities expressing interest. At the time of the due date, twelve entities elected to submit proposals.

- Number of bidders: 12

- Number of unique proposals: 31
- Technology types: PV, PV + Storage (BESS), Geothermal, Hybrid (combination of wind, PV and BESS)
- Locations (county): Yolo, Lake, Colusa, Solano

Incremental RA RFO

VCE partnered with a similar sized CCA in RCEA as both entities are in need of satisfying a California Public Utility Commission’s (CPUC) obligation. Via this joint solicitation, RCEA and VCE sought proposals for incremental RA to fulfill their procurement obligations pursuant to the CPUC November 2019 Decision Requiring Electric System Reliability Procurement for 2021-2023 (D.19-11-016). Respondents provided proposals for eligible new or existing RA resources per the RFO guidelines and the requirements of D.19-11-016.

RCEA and VCE seek to procure up to 20 MW of incremental RA through this solicitation, with at least 11.7 MW online by August 1, 2021 and the remainder online by August 1, 2022. RCEA and VCE are not interested in capacity that becomes available after August 1, 2022. For reference, the compliance obligations for both CCAs are shown in the table below.

Procurement year (online by August 1)	2021	2022	2023
Percent of obligation required by year	50%	75%	100%
RCEA cumulative obligation (MW)	5.4	8.0	10.7
VCE cumulative obligation (MW)	6.3	9.4	12.6

Summary of Responses

Incremental RA RFO bids were received from six entities on May 15, 2020. Bids consisted of both behind-the-meter and in-front of the meter solutions

- Number of bidders: 6
- Number of unique proposals: 14

Technology types: Demand response, rooftop PV +BESS, Stand-alone BESS

TIMELINES

The table below outlines the schedule that VCE is following for each RFO:

Item	Local RFO	Incremental RA RFO
RFO issuance and Q&A open	April 20, 2020	April 28, 2020
Deadline to submit Q&A questions. Submit questions to: Procurement2020@ValleyCleanEnergy.org	May 15, 2020	May 5, 2020
Deadline to submit Notice of Intent to Bid	May 20, 2020	N/A
Deadline to submit RFO Proposals at 5:00pm PT	May 26, 2020	May 15, 2020
Bidders notified of shortlist status	July 13, 2020	Week May 25 th

Complete Power Purchase Agreement (PPA) negotiations	Sept 30, 2020	Late May – Mid July
Award contracts / Approvals*	Q4 2020	June 25 (RCEA) and July 9 (VCE)

*Award and approval date for the joint RFO is subject to change.

CONCLUSION / NEXT STEPS

Staff will continue to evaluate the Local RFO responses both quantitatively and qualitatively and arrive at a short-list in mid-July. The Incremental RA RFO shortlisted four entities and has conducted the first round of interviews to address additional questions and provide further information on their offers. From this list it is anticipated that one to two agreements will be negotiated and brought to the Board for approval in the July / August timeframe. At that time staff will also give an update on the status of shortlisting for the Local RFO.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 21

TO: VCE Board of Directors

FROM: Mitch Sears, Interim General Manager
Jim Parks, Director of Customer Care and Marketing

SUBJECT: Net Energy Metering (NEM) Donation Pilot Program

DATE: June 11, 2020

RECOMMENDATION

Authorize the Interim General Manager to develop and implement a pilot Net Energy Metering Donation Program for FY 2020/21. Staff will report back to the board after one full year of program operation.

BACKGROUND

Members of the VCE board and Community Advisory Committee (CAC) requested that a Net Energy Metering (NEM) donation program be developed. The concept is to allow NEM customers, with outstanding balances exceeding \$100 at their annual true-up, to donate the balance to charity/non-profit organization. This was captured in VCE's adopted NEM policy:

7. NEM customers with less than \$100 in wholesale credits will have the credit balance roll over to the next billing cycle (with no loss of credits). NEM customers with a wholesale credit balance exceeding \$100 on their annual true-up date will be cashed-out, unless they choose to roll over the balance or donate the funds.

When NEM customers were true up in 2019, only 5 customers had balances exceeding \$100, for a total balance of \$5,986. At the February 2020 true up, 64 customers had balances exceeding \$100 for a total of \$21,924. With the incoming legacy NEM customers, the potential for donations will continue to rise. The expectation for the pilot is that we may get \$1000 in donations during the first year of operation, with the opportunity for growth in future years.

DISCUSSION

The CAC Outreach Task Group, the CAC Programs Task Group, and finally the full CAC reviewed the concept and provided input to the proposed program. CAC comments were incorporated into the pilot concept guideline document (attached). Key CAC feedback/comments included:

- All CAC members except one felt that the charities should be aligned with VCE's mission and the donations should be energy-related.
- For customers with large balances, is it possible to offer them the option to donate

some of their credit balance but not all?

- How difficult would it be to send a letter each year reminding customers of their choice and giving them the option to change? If no response, it's the same as the previous year. It is possible that people would not remember their choices year over year and VCE might change the charities/programs from time to time.
- Adopt a policy that extends beyond NEM. Allow customers to donate dividends—get the donation policy in place before we start paying dividends.

The Pilot NEM Donation Program could be the start of a broader donation program that could include donating dividends or providing personal contributions. Starting with a smaller-scale program reduces risk and allows VCE to expand the donation program at a controlled rate. If authorized to establish the pilot program, staff would focus on a maximum of three community based organizations providing energy related services to more than one member jurisdiction as recipients in the initial year. At the conclusion of the first year, staff would report back to the Board and CAC on results with recommendations for establishing a permanent donation program.

CONCLUSION

Due to the limited amount of anticipated donations this fiscal year, staff is recommending a small pilot program this fiscal year to help inform establishment of a permanent donation program.

Attachment

1. Pilot NEM Donation Concept Guidelines

Pilot NEM Donation Program

Background

Most solar net energy metered (NEM) customers pay their electricity bill once per year. This is called an annual true-up. Depending on a customer's annual solar production at true-up, a customer may owe money, or if they generate excess energy, VCE may owe them money.

When a customer's true-up credit balance exceeds \$100, VCE pays the customer for the outstanding balance, zeroing out the account. For credit balances less than \$100, the balance rolls over as a credit on the customer's bill.

Description

VCE would like to pilot a program that offers eligible NEM customers the opportunity to donate their NEM credits to charities/community based organizations (CBOs). Eligible customers will be notified via website, email and/or regular mail and will be given the opportunity to donate their NEM credits to CBOs or to receive a check from VCE. A reply sheet and postage paid envelope will be included in the letter to facilitate an easy response, or customers may respond electronically through email or the VCE website (when this functionality is enabled).

If a customer selects to donate their NEM credits to a selected CBO, the CBO will be provided with the customer's name, address, and amount of donation so a charitable donation receipt can be sent.

Benefits

- Provides funding to local charities/CBOs
- Provides a tax deduction to the donor
- Creates community good will towards VCE
- Reduces the number of checks VCE must write

Potential Donations

After the first year of VCE operation, there were 5 customers with credit balances exceeding \$100. The total amount of credits exceeding \$100 was \$5,986.

During the second year of VCE service, there were 64 customers with credit balances exceeding \$100. The total credit balance for those customers was \$21,924.

The number of NEM customers with outstanding credit balances is expected to grow dramatically as VCE adds over 6,000 new NEM customers in 2020—customers who were previously full-service PG&E customers. Additional customers will continue to be added through new installations in existing buildings as well as new construction.

Charities/CBOs

Customers can choose between two or three CBOs, to be determined. The intent is to keep the number of CBOs limited in order to reduce administrative effort and increase the amount allocated to each CBO.

Selected CBOs will come from one or both of the following categories:

1. **Mission Alignment with VCE** - The selected CBOs will have missions that directly align with VCE's mission and vision. This would include CBOs that focus on energy efficiency, renewable energy, energy storage and/or demand response.
2. **Provide Services to the Community** - This includes CBOs that provide services to the communities we serve such as provision of food, low income housing, family services, bill pay, counseling, etc.

The CBOs will be selected based on input from the CAC and VCE Board. The selected CBOs will be reviewed to ensure they meet our requirements. An annual review of the program and CBOs will be performed and new CBOs may be selected.

Mechanics

VCE will send a letter or email to all NEM customers. With regular mail, a postage paid envelope and return form will be included.

Customers will have the following options:

1. Allow the credit to roll over to offset future energy bills.
2. Receive payment from VCE for the full credit amount.
3. Donate the credit to charity. If yes, select one of the chosen CBOs.

Customers that choose the donation option will be notified that VCE will provide the CBO with their name and address so the CBO can send a donation receipt.

Customers who do not return the form will automatically be enrolled in Option 2 and will receive a check for outstanding solar credits if the total amount exceeds \$100 (per VCE NEM policy). Credits under \$100 will stay on the customer account as a credit against future bills.

Considerations

- Tracking - VCE must keep track of the donors and provide donor information to selected CBOs
- Payments to CBOs - VCE will need to pay CBOs on a regular basis
- Verification – VCE will need to ensure the CBO sends tax-deductible receipts to donors