

**EEI MASTER POWER PURCHASE AND SALE AGREEMENT  
SALES CONFIRMATION  
BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY  
AND**

This confirmation (“Confirmation”) confirms the transaction (“Transaction”) between Pacific Gas and Electric Company, a California corporation, but limited for all purposes hereunder to its electric procurement and electric fuels functions (“Seller” or “Party B”), and

(“Buyer” or “Party A”), each individually a “Party” and together the “Parties”, dated as of the Execution Date, for the sale and purchase of the Product defined herein.

Except as otherwise expressly stated herein, this Confirmation is subject to, and incorporates by reference with the same force and effect as if set forth herein, all of the terms and provisions of the Parties’ EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet [and the amendments and annexes thereto] [*PG&E to identify any amendments or annexes here*], dated as of [MM/DD/YYYY] [*PG&E to insert date in MM/DD/YYYY format*] (collectively, [“Master Agreement”] [“EEI Agreement” *if no Collateral Annex*]) [, and the corresponding Collateral Annex and Paragraph 10 to the Collateral Annex thereto]. [Such Collateral Annex and Paragraph 10 to the Collateral Annex shall be referred to collectively herein as the “Collateral Annex”.] [The Master Agreement and the Collateral Annex shall be referred to collectively herein as the “EEI Agreement”.] The EEI Agreement and this Confirmation shall be referred to collectively herein as the “Agreement.”

Capitalized terms used but not defined in this Confirmation shall have the meanings ascribed to them in the EEI Agreement, the RPS (defined herein), or the Tariff (defined herein). If there is a conflict between the terms in this Confirmation and those in the EEI Agreement, this Confirmation shall control.

*[PG&E to delete references to the Collateral Annex above if there is no existing Collateral Annex between the Parties]*

**[Standard contract terms and conditions shown in shaded text are those that “may not be modified” per CPUC Decisions (“D.”) 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.]**

<b>Seller:</b> Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions		<b>Buyer:</b>
<b>Contact Information:</b>	<b>Name:</b> Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions (“Seller” or “Party B”)	<b>Name:</b>  (“Buyer” or “Party A”)

	<b>All Notices:</b> P.O. Box 770000, Mail Code N12E San Francisco, CA 94177  Attn: Director, Energy Contract Management and Settlements Phone: (415) 973-7780 E-mail: [ <i>PG&amp;E to insert here</i> ]	<b>All Notices:</b>  Attn: Phone: Email:
	<b>Invoices:</b> Attn: Manager, Electric Settlements Phone: (415) 973-6510 Email: [ <i>PG&amp;E to insert here</i> ]	<b>Invoices:</b>  Attn: Phone: Email:
	<b>Scheduling:</b> Attn: Day-Ahead Scheduling Phone: (415) 973-6222 Email: [ <i>PG&amp;E to insert here</i> ]	<b>Scheduling:</b>  Attn: Phone: Email:
	<b>Payments:</b> Attn: Manager, Contract Settlements Phone: (415) 973-4277 Email: [ <i>PG&amp;E to insert here</i> ]	<b>Payments:</b>  Attn: Phone: Email:
	<b>Wire Transfer:</b> BNK: ABA: ACCT: Duns: Federal Tax ID Number:	<b>Wire Transfer:</b> BNK: ABA: ACCT: Duns: Federal Tax ID Number:
	<b>Credit and Collections:</b> <b>Credit and Collections:</b> Attn: Manager, Credit Risk Management Phone: (415) 972-5188 Email: PGERiskCredit@pge.com	<b>Credit and Collections:</b> <b>Credit and Collections:</b> Attn: Phone: Email:  <b>Collateral:</b> Attn: Phone: Email:

	<b>Defaults:</b>	<b>Defaults:</b>
	With additional Notices of an Event of Default or Potential Event of Default to:  Pacific Gas and Electric Company 77 Beale Street, Mail Code B30A San Francisco, CA 94105 Attn: Legal Department Email: <a href="mailto:routinelaw@pge.com">routinelaw@pge.com</a>	With additional Notices of an Event of Default or Potential Event of Default to:  Address:  Attn: Email:
	<b>Contract Manager:</b>	
	Attn: Senior Manager, Contract Management Phone: [ <i>PG&amp;E to insert here</i> ] Email: [ <i>PG&amp;E to insert here</i> ]	

**ARTICLE 1  
COMMERCIAL TERMS**

<b>Seller:</b> PACIFIC GAS AND ELECTRIC COMPANY, limited for all purposes hereunder to its electric procurement and electric fuels functions	<b>Buyer:</b>
<b>Product:</b>	The Product shall consist of Electric Energy and associated Green Attributes from the Project, as further described and subject to the provisions herein.
<b>Project:</b>	All Product sold hereunder shall be generated by the facility (“Project”) listed in Appendix A to this Confirmation.  Buyer shall not be entitled to, and shall not receive, any amount of Green Attributes produced by the Project that is in excess of the Total Quantity.  Buyer shall not be entitled to, and shall not receive, any amount of Electric Energy produced by the Project that is in excess of the Energy Quantity.
<b>Quantity:</b>	(a) <u>For Green Attributes</u> : “Total Quantity” shall be equal to the volume of Green Attributes associated with the Delivered Energy.  (b) <u>For Electric Energy</u> : “Energy Quantity” shall be equal to the product, rounded down to the nearest whole number, of (A) _____ percent ( _____ %) multiplied by (B) the volume of Project Energy during the Energy Delivery Period.

<b>Energy Price:</b>	The Energy Price shall mean the Index Price for each MWh of Delivered Energy under this Agreement.
<b>Green Attributes Price:</b>	The Green Attributes Price shall mean \$ _____ for each MWh of Green Attributes conveyed to Buyer under this Agreement.
<b>Term of Transaction:</b>	<p>Except for the obligations in Sections 4 (Filings and Approvals) and 9 (Confidentiality) which shall be effective and binding as of the Execution Date, the term of the Transaction shall commence upon the Effective Date and shall continue until the end of the Delivery Term, provided that this Agreement shall thereafter remain in effect as to those terms and conditions that expressly survive termination or expiration of the Agreement (“Term”).</p> <p>The Confirmation, and the Transaction and Term hereunder, shall terminate early in the event of (1) a failure to satisfy the Conditions Precedent defined below (2) an early termination of the PPA, or (3) as otherwise provided in the Agreement.</p> <p>Termination because of (1) a failure to satisfy the Conditions Precedent or (2) an early termination of the PPA shall also terminate all of the Parties’ obligations under the Confirmation as of the Transaction Termination Date as provided in Section 4.2, except for the Parties’ confidentiality obligations under Section 9 herein.</p>
<b>Credit Requirements:</b>	<p>The credit requirements for the Product shall be governed by the Agreement and in addition the following shall apply as specified below:</p> <p style="padding-left: 40px;">(i) If the EEI Agreement has a Collateral Annex, then the Exposure Amount for the Green Attributes portion of the Product shall be equal to the product of the following: (I) the Green Attributes Price multiplied by (II)</p> <p style="padding-left: 40px;">(ii) In the event the EEI Agreement does not have a Collateral Annex and Section 8.1 (c) entitled “Collateral Threshold” with respect to Party A Credit Protection and Section 8.2(c), entitled “Collateral Threshold” with respect to “Party B Credit Protection”, of the EEI Agreement applies, then the Termination Payment for the Green Attributes portion of the Product as described in Sections 8.1(c) and 8.2(c) of the EEI Agreement shall be equal to the product of the following: (I) the Green Attributes Price multiplied by (II)</p>
<b>Delivery Term:</b>	The “Delivery Term” shall consist of both the Energy Delivery Period and the Green Attributes Delivery Period.
<b>Energy Delivery Period:</b>	Subject to the satisfaction, or waiver in writing by both Parties, of the Conditions Precedent, the “Energy Delivery Period” shall (1) commence as of the later of January 1, 2021 and the first day of the calendar month following the date upon which the Conditions Precedent occur, and (2) end on the earlier of (a) one hundred and twenty (120) calendar months from the commencement of the Energy Delivery Period as stated above and (b) the termination of the PPA.

<p><b>Green Attributes Delivery Period:</b></p>	<p>Subject to the satisfaction, or waiver in writing by both Parties, of the Conditions Precedent, the “Green Attributes Delivery Period” shall commence on the first day that Seller conveys Green Attributes to Buyer and shall end on that date upon which the amount of Green Attributes conveyed to Buyer satisfies the Total Quantity for the Energy Delivery Period.</p> <p>Seller shall convey Green Attributes to Buyer in the form of WREGIS Certificates. Seller shall transfer WREGIS Certificates into Buyer’s WREGIS account in an amount corresponding to the amount of Delivered Energy.</p>
<p><b>Delivery Point:</b></p>	<p>The “Delivery Point” shall be the PNode designated by the CAISO for the Project. Buyer shall take title and risk of loss of the Electric Energy from the Project at the Delivery Point.</p>
<p><b>Scheduling Obligations:</b></p>	<p>Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator for the Project. Buyer hereby authorizes Seller, or its third party Scheduling Coordinator designee, to deliver the Electric Energy to the CAISO at the Delivery Point.</p>
<p><b>Conditions Precedent:</b></p>	<p>Notwithstanding any other provision of this Confirmation to the contrary, all of the Parties’ obligations except for the Parties’ confidentiality obligations under Article 9 herein, are conditioned upon the following:</p> <ul style="list-style-type: none"> <li>(a) Seller’s receipt, or the Parties’ written waiver, of CPUC Approval as defined below;</li> <li>(b) Seller’s or Buyer’s, as applicable, receipt of the Performance Assurance from the other Party no later than five (5) Business Days following the later of (i) Seller’s Notice to Buyer of CPUC Approval (defined below) and (ii) Seller’s Notice to Buyer of Bankruptcy Court Approval (defined below) (“Green Attributes Condition Precedent”); and</li> <li>(c) The Bankruptcy Court has entered an order (which order has become final and non-appealable), granting PG&amp;E’s motion, and approving and authorizing both (A) the Transaction and (B) PG&amp;E’s assumption of the PPA pursuant to section 365 of the Bankruptcy Code, subject to CPUC Approval (“Bankruptcy Court Approval”).</li> </ul> <p>The CPUC Approval, Green Attributes Condition Precedent and the Bankruptcy Court Approval shall be referred to collectively as the “Conditions Precedent”. The date that the Conditions Precedent are satisfied or waived by Seller shall be and mean the “Effective Date” of the Transaction.</p>

**ARTICLE 2**  
**DEFINITIONS**

- 2.1 “Balancing Authority” has the meaning set forth in the Tariff.
- 2.2 “Balancing Authority Area” has the meaning set forth in the Tariff.
- 2.3 “Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.
- 2.4 “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.
- 2.5 “Broker or Index Quotes” means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets.
- 2.6 “Business Day” means all calendar days other than those days on which the Federal Reserve member banks in New York City are authorized or required by law to be closed, and shall be between the hours of 8:00 a.m. and 5:00 p.m. Pacific Prevailing Time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.
- 2.7 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 2.8 “California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- 2.9 “CEC” means the California Energy Commission or its successor agency.
- 2.10 “Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19- 30089 (DM), which are being jointly administered.
- 2.11 “Contract Price” means the Energy Price plus the Green Attributes Price.
- 2.12 “CPUC” means the California Public Utilities Commission or its successor entity.

2.13 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For the purpose of this Section 2.13, a CPUC Energy Division disposition which contains such findings, or deems approved an advice letter requesting such findings, shall be deemed to satisfy the CPUC decision requirement set forth above.

Also, for the purpose of this Section 2.13 only, the references therein to “Buyer” shall mean “Seller”.

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

2.15 “Delivered Energy” means the Project Energy or portion thereof that is delivered by Seller to Buyer at the Delivery Point.

2.16 “Electric Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

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

2.18 “Execution Date” means the latest signature date found on the signature page of this Agreement.

2.19 “Effective Date” has the meaning set forth in Article 1.

2.20 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (a) the loss of Buyer’s markets; (b) Buyer’s inability economically to use or resell the Product purchased hereunder; (c) Seller’s ability to sell the Product at a price greater than the Contract Price.

2.21 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

2.22 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) 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; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere<sup>1</sup>; (c) 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 Electric Energy. Green Attributes do not include (i) any Electric Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by 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 Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.



2.23 “Index Price” means the day-ahead Locational Marginal Price (as defined in the Tariff) associated with the Delivered Energy for each applicable hour as published by the CAISO on the CAISO website or any successor thereto, unless a substitute publication and/or index is mutually agreed to in writing by the Parties.

2.24 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For the purposes of the definition of “CPUC Approval” in Section 2.13 and Sections 6.1(a), 6.1(b) and 8.2(b) in this Confirmation, the term “law” shall have the meaning set forth in this definition.

2.25 “Letter of Credit” means an irrevocable, non-transferable, standby letter of credit the form of which shall be substantially as contained in Appendix B to this Agreement; provided that, if the issuer is a U.S. branch of a foreign commercial bank, the intended beneficiary may require changes to such form; and the issuer must be a Qualified Institution on the date of delivery of the Letter of Credit to the Secured Party. In case of a conflict of this definition with any other definition of “Letter of Credit” contained in the EEI Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Agreement applies.

2.26 “Market Quotation Average Price” means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the Party obtaining the quotations and in accordance with the Notice provided pursuant to Section 5.2 of the EEI Agreement, which designates the Early Termination Date. If fewer than three quotations are obtained, it will be deemed that the Market Quotations Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined. For purposes of this Section 2.26, “Reference Market-Maker” means a leading dealer in the relevant market selected by a Party determining its exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

2.27 “Notice” means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail). The contacts table of this Confirmation contains the names and addresses to be used for Notices.

2.28 “Power Purchase Agreement” or “PPA” means that Power Purchase Agreement between Seller and \_\_\_\_\_, as amended from time to time. \_\_\_\_\_ executed on \_\_\_\_\_,

2.29 “PNode” has the meaning set forth in the Tariff.

2.30 “Project Energy” means the Electric Energy generated by the Project that is delivered to Seller under the PPA.

2.31 “Qualified Institution” means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must (i) have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies, and (ii) have assets of at least \$10 billion US Dollars.

2.32 “Real-Time Market” has the meaning set forth in the Tariff and shall include any market that CAISO may establish prior to or during the Term that clears at an interval between the Day-Ahead Market and the Real-Time Market.

2.33 “Renewable Energy Credit” or “REC” 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 Law.

2.34 “Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

2.35 “Transactions” as used in the EEI Agreement shall mean the “Transaction” as defined in the preamble above.

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

2.37 “WREGIS Certificate” 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.

2.38 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

**ARTICLE 3**  
**CONVEYANCE OF ELECTRIC ENERGY AND GREEN ATTRIBUTES**

**3.1 Seller's Delivery of Electric Energy.**

Subject to the terms and conditions of this Agreement, beginning on the first day of the Energy Delivery Period and continuing until the last day of the Energy Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Delivered Energy.

**3.2 Seller's Conveyance of Green Attributes.**

(a) Green Attributes. Subject to the terms and conditions of this Agreement, beginning on the first day of the Green Attributes Delivery Period and continuing until the last day of the Green Attributes Delivery Period, Seller shall convey and sell, and Buyer shall purchase and receive, those Green Attributes associated with the Delivered Energy.

(i) Seller represents and warrants that Seller holds the rights to such Green Attributes from the Project and Seller agrees to convey such Green Attributes to Buyer as included in the delivery of the Product from the Project subject to the terms and conditions of this Agreement.

(ii) As set forth above, Seller shall convey only that amount of Green Attributes corresponding to the amount of Delivered Energy and shall do so only during the Green Attributes Delivery Period.

(b) The Green Attributes corresponding to the amount of Delivered Energy shall be deemed to be conveyed to and received by Buyer under this Confirmation as set forth herein. During the Green Attributes Delivery Period, Seller shall convey to Buyer the Green Attributes associated with the Delivered Energy within twenty-five (25) Business Days following the occurrence of both (I) the deposit into Seller's WREGIS account of the WREGIS Certificates for the Green Attributes for the applicable Calculation Period and (II) Buyer's payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein. Seller shall transfer such WREGIS Certificates in an amount equivalent to the amount of Delivered Energy to Buyer's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer.

**3.3 Obligations Limited to Product Delivered to Seller from Project.**

Buyer acknowledges that Seller's delivery and conveyance obligations for Product under this Agreement are limited solely to Product delivered from the Project to Seller pursuant to the PPA. In the event of any reduction in Product volume or the loss or failure of delivery of Product from the Project to Seller under the PPA: (a) Seller shall have no liability to Buyer, including, without limitation, for any damages pursuant the Agreement, including Section 4.1 of the EEI Agreement, nor shall Seller be required to indemnify Buyer for any related penalties, fines, or costs, and (b) such reduction, loss or failure of delivery of Product shall not be a Seller Event of Default under the Agreement, including Article Five of the EEI Agreement.

**ARTICLE 4  
FILINGS AND APPROVALS**

**4.1 Filing for Approval.**

Seller shall file the Agreement (a) with the CPUC requesting for CPUC Approval and (b) for Bankruptcy Court Approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC Approval and Bankruptcy Court Approval. Seller shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Notwithstanding anything to the contrary in the Agreement, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Agreement as a transaction eligible for portfolio content category 1, as defined in California Public Utilities Code Section 399.16(b)(1). The Parties acknowledge and agree that the CPUC determines whether this Agreement complies with California Public Utilities Code Section 399.13(b).

**4.2 Termination Right and Transaction Termination Date.**

In the event that: (a) the CPUC issues a final and non-appealable order not approving this Agreement in its entirety, (b) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (c) approval by the CPUC or the Bankruptcy Court has not been received by Seller on or before three hundred sixty-five (365) days from the date on which Seller files for CPUC Approval or Bankruptcy Court Approval (whichever is later), then either Party may, in its sole discretion, elect to terminate this Agreement upon Notice to the other Party provided in accordance with Section 10.7 of the EEI Agreement. Such Notice shall become effective one (1) Business Day after its provision. The effective date of the Notice shall constitute the "Transaction Termination Date". Any termination elected and noticed in accordance with this Section 4.2 shall terminate all of the Parties' rights and obligations under the Agreement as of the Transaction Termination Date.

**4.3 Effect of Termination.**

Any termination of the Agreement properly exercised by a Party under Section 4.2 shall be without liability or obligation, except for the Parties' confidentiality obligations under Article 9 herein and in the EEI Agreement and shall have no effect on the status of the EEI Agreement.

**ARTICLE 5  
COMPENSATION**

**5.1 Calculation Period.**

The "Calculation Period" shall be each calendar month or portion thereof that Delivered Energy was conveyed to Buyer and for which associated Green Attributes will be transferred to Buyer under this Confirmation as described in Section 3.2(b).

## **5.2 Monthly Cash Settlement Amount.**

Buyer shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period. The “Monthly Cash Settlement Amount” for a particular Calculation Period shall be equal to the sum of (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour; and

(b) equals the Green Attributes Price multiplied by the quantity of Green Attributes (in MWhs) that will be conveyed as described in Section 3.2(b) and that are associated with the Delivered Energy in the Calculation Period; and

(c) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour.]

## **5.3 Payment Date.**

Notwithstanding anything to the contrary in Article Six of the EEI Agreement, payment of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be due and payable four (4) calendar months following the applicable Calculation Period and on or before the later of: (a) the twentieth (20th) day of the month in which the Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (b) ten (10) days following the date of Buyer’s receipt of an invoice issued by Seller for such applicable Calculation Period; provided that, if such payment due date is not a Business Day, then on the next Business Day. Payment to Seller shall be made by wire transfer pursuant to the Notices section of this Agreement. This provision shall survive termination or expiration of the Agreement for all amounts due prior to such termination or expiration.

## **5.4 Invoices.**

The invoice shall include a statement detailing the amount of Delivered Energy, and associated Green Attributes, transferred to Buyer during the applicable Calculation Period. For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon Buyer’s receipt by e-mail of such invoice in PDF format from Seller. Invoices to Buyer shall be sent by email to Buyer’s address for invoices above.

# **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

## **6.1 Seller’s Representations, Warranties, and Covenants.**

(a) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(i) For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means the Agreement.

(ii) For further clarity, the phrase “first delivery” as used in the immediately preceding paragraph means the first date of the Green Attributes Delivery Period.

(d) In addition to the foregoing, Seller warrants, represents and covenants, as of the Effective Date and throughout the Delivery Term, that:

(i) Seller has the contractual rights to sell all right, title, and interest in the Product required to be delivered hereunder;

(ii) Seller has not sold the Product required to be delivered hereunder to any other person or entity, other than (A) the delivery of the Product to the CAISO as Seller is the Scheduling Coordinator for the Project and (B) to other buyers of the Project’s generation to the extent Buyer is not purchasing one hundred percent (100%) of the Project’s generation.

(iii) at the time of delivery, all rights, title, and interest in the Product required to be delivered hereunder are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;

(iv) Seller shall not substitute or purchase any Product from any generating resource other than the Project or the market for delivery hereunder; and

(v) the facility(s) designated by Seller as the Project and all electrical output from the facility(s) designated as the Project are, or will be by the first date of the Green Attributes Delivery Period, registered with WREGIS as RPS-eligible.

(e) As of the Effective Date and throughout the Energy Delivery Period, Seller represents, warrants and covenants that the Project meets the criteria in either (A) or (B):

(A) The Project either has a first point of interconnection with a California Balancing Authority, or a first point of interconnection with distribution facilities used to serve end users within a California Balancing Authority Area; or

(B) The Project has an agreement to dynamically transfer electricity to a California Balancing Authority.

(f) If and to the extent that the Product sold by Seller is a resale of part or all of a PPA between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below as of the Effective Date and throughout the Energy Delivery Period:

- (i) The PPA meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
- (ii) This Agreement transfers only Electric Energy and Green Attributes that have not yet been generated prior to the commencement of the Energy Delivery Period;
- (iii) The Delivered Energy transferred hereunder is transferred to Buyer in real time; and
- (iv) If the Project has an agreement to dynamically transfer electricity to a California Balancing Authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a Balancing Authority participating in the dynamic transfer arrangement.

**6.2** To the extent a change in Law occurs after the Effective Date that causes the representations, warranties, and/or covenants in Section 6.1 that continue beyond the Effective Date to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

**6.3** “Commercially reasonable efforts” as set forth in this Article 6 and as applicable to Seller only shall not require Seller to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000.00) in the aggregate during the Term.

**6.4** Buyer represents and warrants to Seller as of the Execution Date that Buyer has had the opportunity to review and conduct due diligence with respect to the PPA for the Project which is generating the Product that is the subject of this Transaction.

**6.5** The Parties agree that the following sections of the EEI Agreement shall not be applicable to this Confirmation or Transactions hereunder until Seller’s exit from the Chapter 11 Cases has occurred: Sections 5.1(d), 5.1(e), 5.1(f), 10.2(v), 10.2(vi), and 10.10. Notwithstanding anything to the contrary contained in the Agreement with respect to Seller: Buyer acknowledges and agrees that (i) representations and warranties under Section 10.2(x) of the EEI Agreement are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) until Seller’s exit from the Chapter 11 Cases has occurred, the existence or continuation of Seller being Bankrupt is not an Event of Default with respect to Seller under this Agreement (including pursuant to Section 5.1(g) of the EEI Agreement) and does not entitle Buyer to terminate this Agreement solely because of such existence or continuation.

## **ARTICLE 7 TERMINATION AND CALCULATION OF TERMINATION PAYMENT**

### **7.1 Early Termination**

In the event that the PPA is terminated, Seller may, in its sole discretion, elect to terminate this Transaction upon [20] days’ Notice to Buyer. Any termination elected and noticed in accordance with this Section 7.1 shall terminate all of the Parties’ rights and obligations under the Agreement as of the date that is twenty (20) days after the Notice pursuant to this Section 7.1, without further payment or liability to Buyer, including a Settlement Amount or Termination Payment, except (a) other than to promptly

return any remaining Performance Assurance to Buyer, as applicable, (b) for the Parties' confidentiality obligations under Article 9 herein and in the EEI Agreement, and (c) any provisions of the Agreement that expressly survive termination of the Agreement.

## **7.2 Calculation of Termination Payment**

In the event this Transaction becomes a Terminated Transaction pursuant to Section 5.2 of the EEI Agreement, then the Settlement Amount with respect to this Transaction shall not be calculated in accordance with the EEI Agreement, but instead shall be calculated as follows:

The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for the Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of the quotes of at least three (3) Broker or Index Quotes based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to the Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) such Broker or Index Quotes with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.

## **ARTICLE 8 GENERAL PROVISIONS**

### **8.1 Buyer Audit Rights.**

In addition to any audit rights provided under the EEI Agreement, Seller shall, during the Term as may be requested by Buyer, provide documentation (which may include, for example, meter data as recorded by a meter approved by the Project's governing Balancing Authority) sufficient to demonstrate that the Product has been conveyed and delivered to Buyer.

### **8.2 Governing Law.**

(a) Notwithstanding any provision to the contrary in the EEI Agreement, the Governing Law applicable to this Agreement shall be as set forth herein. This Section 8.2 does not change the Governing Law applicable to any other confirmation or transaction entered into between the Parties under the EEI Agreement.

(b) Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each



party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

For the purposes of Section 8.2(b) above, the words “party” and “parties” shall have the meaning ascribed to them in the preamble of this Confirmation, and the word “agreement” shall mean the term “Agreement” as defined in the preamble of this Confirmation.

### **8.3 Notices.**

For purposes of this Transaction, Notices shall be provided by the means specified and defined in this Confirmation. In the event that Seller sends to or receives from, the seller under the PPA a notice of an early termination date of the PPA, Seller shall provide Notice to Buyer of such notice under the PPA, following the later of (a) the delivery or receipt of such notice under the PPA and (b) if applicable, Seller’s receipt of written consent from the seller under the PPA to provide such notice to Buyer.

## **ARTICLE 9 CONFIDENTIALITY**

**9.1** The confidentiality provisions in Section 10.11 of the EEI Agreement shall apply herein, except that each of Buyer and Seller may disclose the following information regarding this Confirmation, without prior Notice or consent of the other Party:

- (a) Party names;
- (b) Resource(s);
- (c) Term;
- (d) Project name, location(s), and information in Appendix A;
- (e) Capacity of each facility designated as the Project;
- (f) The fact that a facility designated as the Project is on-line and delivering;
- (g) Delivery Point;
- (h) The quantity of Product expected or actually delivered under this Confirmation; and
- (i) Information provided by Seller pursuant to Section 8.1 of this Confirmation

**9.2** The Parties agree that the Agreement may be shared on a confidential basis, without prior Notice or consent of the other Party, with the Parties’ counsel and advisors, the United States Trustee for the Northern District of California, and on a confidential professional eyes only basis with counsel and advisors engaged by any official committee of creditors appointed by the United States Trustee for the Northern District of California pursuant to section 1102(a)(1) of the Bankruptcy Code.

**9.3** Except as set forth in this Article 9 and the EEI Agreement, each Party shall provide prior Notice to the other Party of disclosure of confidential information of such other Party for purposes of compliance with any applicable regulation, rule, or order of the CPUC, Federal Energy Regulatory Commission, CEC, the Bankruptcy Court, or other Governmental Authorities.

## **ARTICLE 10 INDEMNITY**

The first sentence of Section 10.4 of the EEI Agreement (Indemnity) shall not apply to this Transaction.

**ACKNOWLEDGED AND AGREED TO BY EACH PARTY'S DULY AUTHORIZED REPRESENTATIVE OR OFFICER:**

**PACIFIC GAS AND ELECTRIC COMPANY,  
limited for all purposes hereunder to its electric  
procurement and electric fuels functions,**

**by its duly authorized officers**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPENDIX A to  
EEI Master Power Purchase and Sale Agreement  
Sales Confirmation**

**PROJECT**

Name: Resource Type: Location: CEC RPS ID: Host Balancing Authority:
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**APPENDIX B**

**FORM OF LETTER OF CREDIT**

*Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

**Date:** *[insert issue date]*

**Beneficiary:** Pacific Gas and Electric Company  
77 Beale Street, Mail Code B28L  
San Francisco, CA 94105  
Attention: Credit Risk Management

**Applicant:** [Insert name and address of Applicant]

**Letter of Credit Amount:** *[insert amount]*

**Expiry Date:** *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. *[insert number of letter of credit]* (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* (“Letter of Credit Amount”). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on *[insert expiry date]* (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
  - A. “Pursuant to the terms of that certain EEI Power Purchase and Sale Agreement (the “Agreement”), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, or any Confirmation thereunder or related thereto, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
  - B. “Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;

3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date in case of an interruption of our business as stated below), at our offices at *[insert issuing bank's address for drawings]*.

All demands for payment shall be made by presentation of original drawing documents and a copy of this Letter of Credit; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank's receiving department]*, with original drawing documents and a copy of this Letter of Credit to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and will effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

*[insert name of issuing bank]*

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_ *[print or type name]*

Title: \_\_\_\_\_ *[print or type title]*

*[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]*

**APPENDIX B**  
**FORM OF LETTER OF CREDIT**  
**EXHIBIT A – SIGHT DRAFT**

TO  
*[INSERT NAME AND ADDRESS OF PAYING BANK]*

AMOUNT: \$ \_\_\_\_\_ DATE: \_\_\_\_\_

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC  
COMPANY THE AMOUNT OF U.S.\$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. DOLLARS)

DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

*[INSERT PAYMENT INSTRUCTIONS]*

DRAWER

BY: \_\_\_\_\_  
NAME AND TITLE