

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 21, 2017

PG&E Advice Letter 5146-E

Erik Jacobson
Pacific Gas and Electric Company
77 Beale St., Mail Code B13U
P.O. Box 770000
San Francisco, CA 94177

Subject: Staff Disposition of Pacific Gas and Electric's (PG&E's) Advice Letter (AL) 5146-E approving three RPS-eligible PPAs resulting from PG&E's 2016 photovoltaic (PV) solicitation.

Dear Mr. Jacobson:

The CPUC Energy Division (ED) approves PG&E's AL 5146-E effective upon the date of this letter. ED has reviewed PG&E's AL 5146-E, the protest filed jointly by Peninsula Clean Energy and Marin Clean Energy (Joint CCAs), and PG&E's reply to the protest. Based on this review, ED has determined that AL 5146-E, requesting to approve three RPS-eligible PPAs (2016 PV PPAs), is in compliance with D.14-11-042.

D.14-11-042 approved PG&E's proposal to roll over the remaining capacity from its closed PV program and directed PG&E to procure this capacity in three additional solicitations – half of the capacity transferred to the Renewable Auction Mechanism (RAM) solicitation, and half divided equally between additional solicitations to be held in 2016 and 2017. The 2016 PV PPAs in this AL are the result of the 2016 solicitation.

Joint CCAs' protest, PG&E's reply, and Energy Division conclusions

In its advice letter, PG&E contends that it has entered into these solicitations at the direction of the CPUC. In the Joint CCAs' protest of AL 5146-E, the Joint CCAs highlight PG&E's "undisputed and clear lack of need for these projects" to argue that the CPUC must reject the projects as "unjust, unreasonable and not in the interest of ratepayers."¹ Therefore, the Joint CCAs recommend that the AL be rejected.

In the event that the AL is approved, the Joint CCAs argue that the costs of 2016 PV PPAs should be excluded from the Power Charge Indifference Adjustment (PCIA) or any other non-bypassable charge. Further, the Joint CCAs argue that the costs of these contracts should not be attributed to customers already departed from PG&E's bundled service "as of the later of the Advice Letter's effective date or the date of execution by the parties to the contract."² PG&E, in its reply to the protest, points out that the Commission-approved methodology for calculating the PCIA provides that a contract's vintage corresponds with the execution date, not its approval.

¹ Joint CCA Parties' Protest to Pacific Gas and Electric's Advice Letter 5146-E, p. 1.

² Joint CCA Parties' Protest to Pacific Gas and Electric's Advice Letter 5146-E, p. 9.

PG&E further insists that the appropriate venue to protest the PCIA is in R.17-06-026, not within a protest to an AL.

On the first point regarding PG&E's need for incremental renewable resources, the Energy Division sees no reason to depart from conclusions reached in D.14-11-042. The Commission has previously decided that PG&E's forecasted renewable position is not justification enough to end its RAM participation.³ PG&E's procurement in this solicitation is necessary and proper to comply with that decision.

On the second point regarding the PCIA and departed customers, the Commission determined in D.08-09-012, Conclusion of Law 15, the rules for vintaging as "the time a commitment is made" is when the IOU executes a contract or begins the construction of a new generation resource, not when deliveries begin under the contract or the generation resource becomes operational." Further, as noted by PG&E, the appropriate venue to modify these rules is R.17-06-026.

Energy Division Summary

PG&E rightly notes in its reply to the protest that it "must continue to comply with D.14-11-042's requirements unless and until the Commission directs otherwise."⁴ Without permission from the Commission to cancel the solicitations ordered by D.14-11.042, PG&E was correct in performing the solicitation and selecting the three 2016 PV PPAs.

The 2016 PV PPAs are the result of a RAM solicitation ordered by the Commission in D.14-11-042. The solicitation followed the 2016 Request for Offer (RFO) Protocol that the Commission approved via advice letter on November 28, 2016. The RFO Protocol includes guidelines that must be met by participants, all of which were satisfied by the 2016 PV PPAs. Therefore, the solicitation process was properly undertaken by PG&E, and the terms of the resulting 2016 PV PPAs are reasonable.

Please contact Brent Tarnow of Energy Division at brent.tarnow@cpuc.ca.gov if you have any questions.

Sincerely,



Edward Randolph
Director, Energy Division
California Public Utilities Commission

cc: Tim Lindl, Pacific Gas and Electric Company
David Silberman, Peninsula Clean Energy
C.C. Song, Marin Clean Energy

³ D.17-08-025, Decision Denying Pacific Gas and Electric Company's Petition for Modification of Decision 14-11-042

⁴ PG&E Reply to the Protest from Joint CCA Parties, October 25, 2017, p. 1, referencing Commission Rules of Practice and Procedure 16.1(b) and 16.4(h).

September 28, 2017

Advice 5146-E

(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

Subject: Advice Letter Filing of PG&E's 2016 Photovoltaic Solicitation Power Purchase Agreements

I. Purpose and Background

Pursuant to Decision (“D.”) 14-11-042, Pacific Gas and Electric Company (“PG&E”) hereby submits this Advice Letter, seeking approval of three Renewables Portfolio Standard (“RPS”)-eligible power purchase agreements (“PPAs”) executed between PG&E and one seller resulting from PG&E’s 2016 photovoltaic (“PV”) solicitation. In D.14-11-042, the California Public Utilities Commission (“Commission” or “CPUC”) approved PG&E’s proposal to roll over the remaining capacity from its closed photovoltaic (“PV”) program, and directed PG&E to procure this capacity in three additional solicitations. Specifically, the Commission ordered PG&E to transfer one-half of the remaining PV program capacity to the sixth Renewable Auction Mechanism (“RAM”) solicitation and further ordered PG&E to procure the remaining one-half of the volumes equally in two additional solicitations to be held in 2016 and 2017.¹ PG&E launched the 2016 PV solicitation in December 2016, in compliance with D.14-11-042’s requirements.

II. RPS Compliance Need

At the time PG&E initiated the 2016 PV solicitation, PG&E’s forecasts indicated that PG&E would not have a need for incremental RPS deliveries until at least 2026.² In PG&E’s most recent Renewable Net Short (“RNS”) calculation, filed on July 21, 2017 in its Draft 2017 RPS Procurement Plan, PG&E forecasts that its bundled customers will not have any incremental RPS need until after 2033.³ Thus, PG&E does not have a need for the incremental RPS-eligible deliveries under the PPAs to fulfill its RPS requirements. Nevertheless, as discussed below and

¹ D.14-11-042 at pp. 104-105, Ordering Paragraph (“OP”) 32.

² PG&E’s 2016 RPS Procurement Plan, filed January 23, 2017 in R.15-02-020 at p. 1.

³ PG&E Draft 2017 RPS Procurement Plan, filed July 21, 2017 in R.15-02-020 at p. 1.

in the attached confidential appendices, PG&E believes the PPAs represent the lowest cost opportunities resulting from the solicitation that meet the procurement mandate of D.14-11-042.

III. Solicitation Summary

A. Solicitation Process

1. Design

On November 2, 2016, PG&E filed Advice Letter 4950-E seeking to update the 2016 PV Request for Offers (“RFO”) Protocol and Appendices (including the guidelines for eligibility, overall procurement goals, and a description of the selection process). That advice letter was approved without modification on November 28, 2016, with an effective date of December 2, 2016. Under the approved 2016 PV Protocol, the primary guidelines for eligibility include:

- 1) Project size: Greater than 3 MW up to 20 MW.
- 2) Project location: Interconnected to PG&E, SCE or SDG&E distribution or transmission system.
- 3) Seller must have a completed System Impact Study, a Phase II interconnection study, or have documentation showing that the project passed the Wholesale Distribution Tariff or California Independent System Operator (“CAISO”) Fast Track screens.
- 4) Seller must have previous experience constructing a project of a similar technology and capacity.
- 5) The project must be able to begin commercial operation within 36 months of CPUC final and non-appealable approval of the associated PV PPA.
- 6) Existing facilities currently under contract may participate in the RFO provided that the existing contract terminates within 36 months of the expected date of CPUC approval of the PV PPA.

After review by the Independent Evaluator (“IE”), all documents for the 2016 PV solicitation, including the Solicitation Protocol document, the PPA, and an Excel offer form with detailed instructions were posted on PG&E’s [PV Program website](#). The Excel offer form included an electronic signature whereby the Seller agreed to abide by the terms and conditions of the Protocol and to maintain confidentiality regarding its offer.

2. Process Overview

PG&E notified over 2,700 market participants (from PG&E’s normal distribution list) when the 2016 PV solicitation was launched on December 7, 2016. PG&E adhered to the timeline in the table below:

Date/Time	Event
December 7, 2016	PG&E issued the 2016 PV RFO
December 14, 2016	Bidders' Webinar for 2016 PV RFO
January 18, 2017 no later than 12:00 P.M.(PPT)	Offers Due. Offer(s) must be submitted to the online platform at Power Advocate. All Projects must provide a completed Phase II or equivalent interconnection study with applicable appendices or showing that the project passed the WDAT/WDT or CAISO Fast Track screens. Projects must have a queue position and remain in the queue. Offer evaluation begins.
July 11, 2017	PG&E met with members of the Procurement Review Group ("PRG") concerning the 2016 PV RFO.
July 14, 2017	PG&E selected offers and notified Selected and Waitlist Participants.
July 19, 2017 *	Deadline for Selected and Waitlisted Participants to return signed acceptance letters.
July 21, 2017 *	Waitlisted Participants were notified if they had been selected.
July 28, 2017 * no later than 1:00 P.M.(PPT)	Submittal of Signed PPA. Selected Participants that wished to continue participation in the 2016 PV RFO had to return a signed PV PPA and required documentation as shown in Appendix VIII of the PPA to PG&E.
July 31, 2017 * no later than 1:00 P.M.(PPT)	Selected Waitlisted Participants that wished to continue participation in the 2016 PV RFO had to return a signed PV PPA with required documentation as shown in Appendix VIII to the PV PPA.
September 22, 2017	PG&E executed 3 PPAs resulting from 2016 PV solicitation.

*Dates that differ from the approved Protocol due to PG&E delaying the solicitation.⁴

⁴ PG&E sent out a market notice on April 5, 2017 informing bidders that the solicitation was being delayed. A subsequent notice was sent on June 23, 2017 informing bidders that the solicitation was being resumed.

3. Bidders Webinar

PG&E held the Bidders' Webinar on December 14, 2016, with approximately 40 people attending via the internet or by phone. The Bidders' Webinar materials and an audio file of the conference are posted on PG&E's [PV Program website](#).

The Bidders' Webinar covered the following major subjects: (1) overview of the 2016 PV solicitation which included the public disclosure of information, updates from the 2014 PV PPA RFO, and the role of the IE; (2) eligibility requirements to participate in the solicitation; (3) an overview of the PPA including the new Time of Delivery ("TOD") factors; (4) the evaluation methodology used to select winning projects; (5) the offer submittal process and the required offer submission forms; (6) interconnection information; and (7) questions from webinar attendees.

Eight questions were asked by potential Participants during the Webinar. In addition, PG&E responded to email questions from bidders both before and after the Bidders' Webinar, and posted questions and answers of general interest on the website.

4. Offer Overview

PG&E received 61 offers for 31 unique facilities from 13 developers totaling 561 MW.

The target procurement for the 2016 PV solicitation was 68.75 MW. The existing RAM Program rules provide flexibility for PG&E to procure plus or minus 20 MW of this target.⁵

Participants submitting bids into the RFO had the option to bid their project as either energy-only ("EO"), partial capacity deliverability status ("PCDS"), or with full capacity deliverability status ("FCDS"). Projects that bid in as PCDS or FCDS must achieve deliverability status by the date indicated on their offer form.

B. Offer Evaluation

PG&E screened all offers on a "pass-fail" basis against the following eligibility requirements: project size; location; interconnection status; site control; developer experience; commercialized technology; and commercial operation date.

Based on this initial screen, PG&E eliminated eight offers as non-conforming for not meeting the minimum interconnection requirement, not having site control, or because they were dependent on other variants.

Conforming offers were then evaluated based on PG&E's approved Least Cost Best Fit methodology and ranked by Portfolio Adjusted Value .

⁵ Resolution E-4414, Ordering Paragraph 8.

As part of its evaluation, PG&E assumed that all new resources bidding as partially or fully deliverable will achieve PCDS or FCDS by no later than the date indicated on their offer form, and the project's maximum Resource Adequacy ("RA") benefit was included beginning on that date through the remaining term. The RA benefits were evaluated by applying the monthly Net Qualifying Capacity to PG&E's forecast of avoided capacity costs.

C. Offer Selection

Using the evaluation criteria described above, PG&E selected the least-cost offers while staying within the permitted solicitation target. The list of executed contracts can be found in section E.2 below (Summary of Solicitation Selections). A more detailed description of the selection and execution process is contained in Confidential Appendix C.

D. Major PPA Terms

A summary of some of the terms and conditions in PG&E's approved PPA used in the 2016 PV solicitation is included in the chart below. Please note that all capitalized terms not defined in the chart below have their meaning provided in the PV PPA.

Key Contract Term	PG&E PV PPA
Delivery Term	10, 15 or 20 years.
Eligibility	Existing and new projects within the IOUs' service territories.
Contract Quantity	Participants in the solicitation are asked to provide a best estimate of annual deliveries as part of an Offer, which serves as a basis for the Guaranteed Energy Production ("GEP").
Commercial Operation Date	Must be commercially operable within 36 months of the final and non-appealable approval by the CPUC of the associated PPA, subject to the excused delays for permitting, transmission and force majeure.
Energy only or FCDS	Sellers have the option to bid in as energy only, PCDS or FCDS.
Performance Standards/ Requirements: Minimum production requirement	GEP = 160% of contract quantity measured over a two year period (as available non-peaking). 90% of expected contract quantity based on one year of rolling production (baseload). Small hydro projects are exempt from the minimum production requirement.
Scheduling Coordinator ("SC")	PG&E is the SC.
Excess Network Upgrade Costs Termination Right	Buyer has the right to terminate this Agreement within sixty (60) days after Seller provides to Buyer the results of any

Key Contract Term	PG&E PV PPA
	Interconnection Study, or interconnection agreement estimates, that specifies, or reflects that the maximum total cost of the Network Upgrades to Buyer may in the aggregate exceed 110% of the amount identified in the Interconnection Studies that were submitted with Seller's original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars (\$100,000.00) ("Network Upgrades Cap"), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs.
Excess Network Upgrade Costs	Seller shall provide Buyer within ten (10) Business Days of receipt, copies of any Interconnection Study or the interconnection agreement that may give rise to a termination right of Buyer. Seller shall provide Buyer with a Notice of its irremovable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost. A failure to provide such an election is deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.
Metering	Required to have a CAISO approved revenue meter.
WREGIS	<p>Seller shall, at its sole expense but subject to the Compliance Cost Cap (applicable to change-in-law only), take all action to ensure all WREGIS Certificates associated with all Renewable Energy Credits ("RECs") corresponding to the Delivered Energy are issued and tracked for Buyer's sole benefit.</p> <p>Seller must transfer all RECs associated with Delivered Energy, even if the Delivered Energy is not accepted and/or paid for because it is above the Contract Capacity or, for Baseload Product, paid for at a lower price because it is in excess of the scheduled energy (beyond tolerance band).</p>
Excess Sales	Seller has option to contract as full buy-sell or excess sales.
Curtailment	<p>Seller must curtail in response to CAISO, reliability coordinator, or Participating Transmission Owner curtailment. There is no limitation on curtailment of this type and no payment.</p> <p>Buyer may direct curtailment for any reason for unlimited hours per year. Buyer will pay Seller contract price for energy deemed delivered.</p>
Force Majeure	"Force Majeure" includes any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the party invoking force

Key Contract Term	PG&E PV PPA
	<p>majeure's reasonable control and the party has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations and such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.</p> <p>(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:</p> <p>(i) flooding, lightning, landslide, earthquake, or unusual or extreme adverse weather-related events;</p> <p>(ii) war (declared or undeclared), riot or similar civil disturbance;</p> <p>(iii) strikes, work stoppage or other labor disputes; or</p> <p>(iv) emergencies declared by the Transmission Provider successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy</p> <p>(b) Force Majeure shall not be based on:</p> <p>(i) Buyer's inability economically to use or resell the Product purchased hereunder;</p> <p>(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;</p> <p>(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project;</p> <p>(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;</p> <p>(vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;</p> <p>(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;</p> <p>(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure;</p> <p>(ix) a Party's inability to pay amounts due to the other Party under this Agreement.</p>
Failure to Meet Guaranteed Commercial	Six-month extension allowed in the event of Permitting Delay, Transmission Delay or Force Majeure. Notice of Permitting Delay

Key Contract Term	PG&E PV PPA
Operation Date	or Transmission Delay required no later than 6 months after Effective Date. Notice of Force Majeure due as soon as possible.
Confidentiality	In general, non-public terms of the Agreement shall not be disclosed except to Affiliates, to Buyer's Procurement Review Group, or in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule. Permitted disclosures expanded to include the number of bids per company, project size, contract capacity, and the achievement of project milestones.
Construction Start and Commercial Operation Certification Forms and Procedures	The Construction Start and Commercial Operation Certification Forms and Procedures are provided.
Credit—Project Development Security	Sellers to post project development security prior to commercial operation: \$60/kW (As-available), \$90/kW (Baseload)
Credit—Delivery Term Security	Sellers to post delivery term security for the delivery term 5% of expected contract revenues.

E. Solicitation Results

1. Summary of Solicitation Participation

Confidential Appendix A contains information on the results of PG&E's 2016 PV solicitation and Appendix G includes the location of the bids by county.

2. Summary of Solicitation Selections

The executed PPAs are summarized in the chart below. For purposes of this Advice Letter, all of the PPAs below are referred to as the "2016 PV PPAs." For further information please refer to Appendices F and G:

Seller	Technology	Capacity (MW)	Location	Est. Annual Deliveries (GWh)	Commercial Operation Date (COD)	Term (years)
Recurrent	PV	20.0	Kern County	60.5	06/30/2020	15
Recurrent	PV	20.0	Kern County	60.5	06/30/2020	15
Recurrent	PV	20.0	Kern County	60.5	06/30/2020	15

D.11-12-052 requires that the investor-owned utilities (“IOUs”) make an upfront showing related to the portfolio content categorization of each proposed RPS procurement transaction. Specifically, for approval of contracts meeting the criteria of Public Utilities Code Section 399.16 (b)(1)(A) (“Portfolio Content Category One”), an IOU may show that the RPS-eligible generator has its first point of interconnection with the WECC transmission system within the boundaries of a California balancing authority area (“CBA”).⁶

Each of the 2016 PV PPAs satisfies the upfront showing required by D.11-12-052 for Portfolio Content Category One. Each PPA has or is expected to have its first point of interconnection within the metered boundaries of an IOU transmission or distribution system, within a CBA. Therefore, the RPS-eligible procurement from the PPAs satisfies the criteria for Portfolio Content Category One adopted in D.11-12-052.

In D.07-01-039, the Commission adopted an Emission Performance Standard (“EPS”) that applies to contracts for a term of five or more years for baseload generation with an annualized plant capacity factor of at least sixty (60) percent. The EPS does not apply to the 2016 PV PPAs because all three generating facilities have a forecast annualized capacity factor of less than 60 percent and are therefore not baseload generation under Paragraphs 1(a)(11) and 3(2)(a) of the Adopted Interim EPS Rules.

IV. Request for Commission Approval

PG&E requests that the Commission approve the 2016 PV PPAs through an Energy Division disposition letter issued within 30 days of the filing of this Advice Letter (by October 28, 2017), including adoption of the following findings of fact and conclusions of law:⁷

1. Each of the 2016 PV PPAs should be approved in its entirety, including payments to be made by PG&E pursuant to each PPA, subject to the Commission’s review of PG&E’s administration of the PPA;
2. A finding that the selection of the 2016 PV PPAs was consistent with PG&E’s approved 2016 PV RFO protocol, and that the terms of each PPA are reasonable and prudent;
3. A finding that any procurement pursuant to the 2016 PV PPAs constitutes procurement from an eligible renewable energy resource for purposes of determining PG&E’s compliance with any obligation or target that it may have to procure eligible renewable energy resources pursuant to the California RPS (Public Utilities Code Section 399.11 et

⁶ See D.11-12-052 at pp. 40-41; See also *id.* at p. 37 (explaining that the upfront showing required of IOUs for procurement projected to meet Portfolio Content Category One based on the relevant point of interconnection would be “straightforwardly based on showing that the RPS-eligible generator has the applicable first point of interconnection.”).

⁷ If the Energy Division disposition does not include explicit findings and conclusions, the approval of this Advice Letter shall be deemed to include approval of the requested findings and conclusions.

seq.), D.03-06-071, D.06-10-050, D.10-12-048, D.11-12-020, D.11-12-052, Resolution E-4414, or other applicable law;

4. A finding that, subject to after-the-fact verification that all applicable criteria have been met, the Energy Division accepts PG&E's upfront showing that deliveries from the 2016 PV PPAs should be categorized as procurement under the portfolio content category specified in Public Utilities Code Section 399.16 (b)(1)(A);
5. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
 - a. The 2016 PV PPAs are not subject to the EPS because each of the respective generating facilities has a forecast capacity factor of less than 60 percent and, therefore, is not baseload generation under Paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules; and
 - b. A finding that PG&E has provided the notice of procurement required by D.07-01-039 in this Advice Letter filing; and
6. A finding that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the 2016 PV PPAs shall be recovered in rates and all of the utility's costs under the 2016 PV PPAs shall be recovered through PG&E's Energy Resource Recovery Account and that PG&E may recover any stranded costs consistent with D.08-09-012.

V. Request for Confidential Treatment

In support of this Advice Letter, PG&E has provided the following confidential information: the executed 2016 PV PPAs and other information that more specifically describes the rights and obligations of the parties, and the confidential results of the solicitation. This information is being submitted in the manner directed by D.08-04-023 to demonstrate the confidentiality of material and to invoke the protection of confidential utility information provided under either the terms of the IOU Matrix, Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023, or General Order 66-C. A separate Declaration Seeking Confidential Treatment is being submitted concurrently with this Advice Letter.

Confidential Attachments:

Confidential Appendix A:	Solicitation Data (Redacted version included with public filing)
Confidential Appendix C:	Valuation Process Summary
Confidential Appendix D:	Analysis of Customer Benefits
Confidential Appendix E:	Independent Evaluator Report (Redacted version included with public filing)
Confidential Appendix F:	Executed Contracts and Letters of Concurrence

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than October 18, 2017, which is 20 days after the date of this filing. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company
77 Beale Street, Mail Code B13U
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-3582
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

VI. Tier Designation

PG&E is designating this as a Tier 2 Advice Letter, in accordance with D.10-12-048 and Resolution E-4414.

VII. Effective Date

PG&E requests that the Energy Division issue a disposition approving PG&E's 2016 PV PPAs within the initial review period, which will expire within 30 days of the filing of this Advice Letter (by October 28, 2017). Pursuant to General Order 96-B, the advice letter will be effective upon approval.

VIII. Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for R.15-02-020. Address changes to the General Order 96-B list and electronic approvals should be directed to PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

/S/

Erik Jacobson
Director – Regulatory Relations

cc: Cheryl Lee – Energy Division
Poonum Agrawal – Energy Division
Service List for R.15-02-020

Limited Access to Confidential Material:

The portions of this Advice Letter marked Confidential Protected Material are submitted under the confidentiality protection of Section 583 and 454.5(g) of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of, among other items, the contracts themselves and price information of proposed RPS-eligible PV contracts, which are protected pursuant to D.06-06-066 and D.08-04-023. A separate Declaration Seeking Confidential Treatment regarding the confidential information is submitted concurrently herewith.

Attachments:

- Confidential Appendix A: Solicitation Data (Redacted version included with public filing)
- Appendix B: PG&E's 2016 PV Standard Contract
- Confidential Appendix C: Valuation Process Summary
- Confidential Appendix D: Analysis of Customer Benefits
- Confidential Appendix E: Independent Evaluator Report (Redacted version included with public filing)
- Confidential Appendix F: Executed Contracts and Letters of Concurrence
- Appendix G: Location of Bids

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 E)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Kingsley Cheng

Phone #: (415) 973-5265

E-mail: k2c0@pge.com and PGETariffs@pge.com

EXPLANATION OF UTILITY TYPE

(Date Filed/ Received Stamp by CPUC)

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

Advice Letter (AL) #: **5146-E**

Tier: 2

Subject of AL: **Advice Letter Filing of PG&E's 2016 Photovoltaic Solicitation Power Purchase Agreements**

Keywords (choose from CPUC listing): Compliance, Agreements

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.10-12-048 and E-4414

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: Yes. See the attached matrix that identifies all of the confidential information.

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: Chris DiGiovanni, (415) 973-4656

Resolution Required? Yes No

Requested effective date: **October 28, 2017**

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

California Public Utilities Commission

Energy Division

EDTariffUnit

505 Van Ness Ave., 4th Flr.

San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Erik Jacobson

Director, Regulatory Relations

c/o Megan Lawson

77 Beale Street, Mail Code B13U

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

**DECLARATION OF CHRIS DIGIOVANNI
SEEKING CONFIDENTIAL TREATMENT
FOR CERTAIN DATA AND INFORMATION
CONTAINED IN ADVICE LETTER 5146-E**

I, Chris DiGiovanni, declare:

1. I am a Manager in the Renewable Procurement department within Energy Policy and Procurement at Pacific Gas and Electric Company (PG&E). In this position, my responsibilities include management of PG&E's Photovoltaic (PV) program. This declaration is based on my personal knowledge of PG&E's practices and my understanding of the Commission's decisions protecting the confidentiality of market-sensitive information.

2. Based on my knowledge and experience, and in accordance with the Decisions 06-06-066, 08-04-023, and relevant Commission rules, I make this declaration seeking confidential treatment for certain data and information contained in PG&E's Advice Letter 5146-E submitted on September 28, 2017.

3. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes confidential market sensitive data and information covered by D.06-06-066. The attached matrix also specifies why confidential protection is justified. Further, the data and information: (1) is not already public; and (2) cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference, I am incorporating into this declaration all of the explanatory text that is pertinent to my testimony in the attached matrix.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on September 27, 2017 at San Francisco, California.

CHRIS DIGIOVANNI

PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

ADVICE LETTER 5146-E

September 28, 2017

IDENTIFICATION OF CONFIDENTIAL INFORMATION

Redaction Reference	Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To	Justification for Confidential Treatment	Length of Time Data To Be Kept Confidential
Document: Advice Letter 5146-E (and Appendices)			
Appendix A (Solicitation Data and Project Development Milestones) – gray shaded areas	VIII.B – Quantitative analysis for scoring and evaluating bids	Confidential quantitative analysis for scoring and evaluating bids in solicitation	Three years after winning bidders selected
Appendix C (Valuation Process Summary) – in its entirety	VIII.B – Quantitative analysis for scoring and evaluating bids	Confidential quantitative analysis for scoring and evaluating bids in solicitation	Three years after winning bidders selected
Appendix D (Analysis of Customer Benefits and NMV) – in its entirety including attachment	VII.G – Terms and conditions of RPS contracts not eligible for Supplemental Energy Payments VII – Score sheets, analysis and evaluation for RPS Projects VIII.B – Quantitative analysis for scoring and evaluating bids	Confidential terms and conditions of RPS contract that is not eligible for Supplemental Energy Payments. Confidential score sheets, analyses and evaluation for RPS contract. Confidential quantitative analysis for scoring and evaluating bids in solicitation	Three years from contract date for deliveries to start or one year after expiration. Three years Three years after winning bidders selected

PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

ADVICE LETTER 5146-E

September 28, 2017

IDENTIFICATION OF CONFIDENTIAL INFORMATION

Redaction Reference	Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To	Justification for Confidential Treatment	Length of Time Data To Be Kept Confidential
<p>Appendix E (Independent Evaluator Report) – gray shaded areas</p>	<p>VII.G – Terms and conditions of RPS contracts not eligible for Supplemental Energy Payments</p> <p>VII – Score sheets, analysis and evaluation for RPS Projects</p> <p>VIII.B – Quantitative analysis for scoring and evaluating bids</p>	<p>Confidential terms and conditions of RPS contract that is not eligible for Supplemental Energy Payments.</p> <p>Confidential score sheets, analyses and evaluation for RPS contract.</p> <p>Confidential quantitative analysis for scoring and evaluating bids in solicitation</p>	<p>Three years from contract date for deliveries to start or one year after expiration.</p> <p>Three years</p> <p>Three years after winning bidders selected</p>
<p>Appendix F (Executed PPAs and Letters of Concurrence) - in its entirety</p>	<p>VII.G – Terms and conditions of RPS contracts not eligible for Supplemental Energy Payments</p>	<p>Confidential terms and conditions of RPS contract that is not eligible for Supplemental Energy Payments.</p>	<p>Three years from contract date for deliveries to start or one year after expiration</p>

Confidential Appendix A

Solicitation Data for Executed Contracts (Redacted version included with public filing)

**Confidentiality Protected Under D.06-06-066 App 1,
Item VIII “Competitive Solicitation (Bidding) Information – Electric”**

Table 1. Overview of 2016 PV RFO

	Seller's (Developer's) Name	Number of bids submitted	Full Capacity project	Energy Only project	Number of bids shortlisted	Number of executed contracts
1	8minutenergy Renewables, LLC	4			N/A	0
2	Consolidated Edison Developmnet, Inc.	1			N/A	0
3	CS Solar LLC	4			N/A	0
4	Del Sol NRG, INC.	1			N/A	0
5	EDF Renewable Development Inc.	3			N/A	0
6	First Solar Development	6			N/A	0
7	FTP Power LLC, dba Sustainable Power Group (sPower)	2			N/A	0
8	Lendlease Energy Development LLC	16			N/A	0
9	Middle River Power, LLC	2			N/A	0
10	NextEra Energy Resources, LLC	6			N/A	0
11	Recurrent Energy	12			N/A	3
12	SolarGen USA LLC (together with Cypress Creek Renewables)	2			N/A	0
13	Valleywide Construction Services	2			N/A	0

Note: Given the structure of the PV program, the concept of a shortlist is not applicable.

Table 2. Overview of 2016 PV RFO by Capacity

	Contract Size (MW)	Number of Bids Submitted	Number of Bids Shortlisted	Number of executed contracts
1	> 3-5	1	N/A	0
2	>5-10	2	N/A	0
3	>10-15	5	N/A	0
4	>15-20	53	N/A	3

Note: Given the structure of the PV program, the concept of a shortlist is not applicable.

Table 3. Overview of 2016 PV RFO by Technology

Participating Technology	Number of Bids Submitted	Number of Bids Shortlisted	Number of executed contracts
Solar PV	61	N/A	3

Note: Given the structure of the PV program, the concept of a shortlist is not applicable.

Table 4. Overview of 2016 PV RFO

Technology Type	Total # of Bids into RFO	Total # of Eligible Bids	Total # of Bids Shortlisted	Total # of Executed Contracts	Mean RFO Bid Size (MW)	Mean Shortlist Bid Size (MW)	Mean Contract Size (MW)	No. of RFO Bids Declared Non-conforming				
								Paired with Storage	Site Control	Contingent on Other Offers	Interconnection	COD > 36 mos
1 Solar PV	61	53	N/A	3	18.65	N/A	20	3	2	2	1	0

Note: Given the structure of the PV program, the concept of the shortlist is not applicable.

Table 5. All Bids

Portfolio Adjusted Value Overview by Project Size (MW)						
	PV RFO			PV Shortlist		
	Min.	Max.	Mean	Min.	Max.	Mean
>3-5				N/A	N/A	N/A
>5-10				N/A	N/A	N/A
>10-15				N/A	N/A	N/A
>15-20				N/A	N/A	N/A

Table 6. All Bids

Portfolio Adjusted Value Overview by Technology Type						
	PV RFO			PV Shortlist		
	Min.	Max.	Mean	Min.	Max.	Mean
Solar PV				N/A	N/A	N/A

Note: Given the structure of the PV program, the concept of the shortlist is not applicable.

*Non-conforming bids are not included

Appendix B

PG&E's PV Solicitation Standard Contract

Appendix B: PV PROGRAM: Form of Power Purchase Agreement

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.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Form of Progress Report
- Appendix IV Construction Start and Commercial Operation Certification Forms and Procedures
 - Appendix IV-1 Construction Start Form of Certification
 - Appendix IV-2 Commercial Operation Certification Procedure
 - Attachment A Commercial Operation Form of Certification
 - Appendix IV-3 Capacity Test Procedure [*For Baseload Product only*]
- Appendix V GEP Damages Calculation
- Appendix VI Notification Requirements for Available Capacity and Project Outages
- Appendix VII Form of Consent to Assignment
- Appendix VIII Seller Documentation Condition Precedent
- Appendix IX Form of Actual Availability Report [*For As-Available Product only*]
 - Attachment A Form of Actual Availability Report
- Appendix X Telemetry Parameters for Wind or Solar Facility
- Appendix XI Form of Letter of Concurrence
- Appendix XII Supplier Diversity Program
- Appendix XIII Project Specifications and Contract Capacity Calculation
- Appendix XIV Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement (“Agreement”) is entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and _____ *[insert name of Seller]*, a _____ *[include place of formation and business type]* (“Seller”), as of the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet at any time after the Execution Date.

Product: As-Available Peaking*

* References within the text of the Agreement to Baseload Product or As-Available Non-Peaking Product will not apply for this Agreement.

Deliverability:

- Energy Only Status
- Partial Capacity Deliverability Status (“PCDS”)
 - a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received:
_____ (mm/dd/yyyy);
 - b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____ MW.
- Full Capacity Deliverability Status (“FCDS”)
 - a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received:
_____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

- Full Buy/Sell
- Excess Sale

Seller shall elect one of the following Delivery Terms:

- ten (10) Contract Years
- fifteen (15) Contract Years
- twenty (20) Contract Years

B. Project Description Including Description of Site

Contract Capacity: [_____] MW *[Provide the maximum capacity to be made available to PG&E pursuant to the transaction, which in the case of an Excess Sale transaction, may be less than the maximum capacity of the Project]*

(i) Project Development:

(a) The Project is an:

[An existing or repowered Project with substantial changes, including but not limited to, new major permits, a new interconnection study, or the construction of new generators, should check “New Project” instead of “Existing Project.”]

Existing Project

New Project

(1) If the Project is a New Project:

(A) The date on which the Commercial Operation Date of the Project is expected (must be no later than the Guaranteed Commercial Operation Date):

(B) The Expected Construction Start Date of the Project:

(2) If the Project is an Existing Project:

(A) The Expected Initial Energy Delivery Date (which shall be no later than the Guaranteed Commercial Operation Date) is:

(b) Project development Milestone schedule *[to be completed by Buyer and Seller. Insert additional rows if necessary]:*

Identify Milestone	Date for Completion

(ii) Supplier Diversity. For the purpose of Section 4 of the Supplier Diversity Program obligation set forth in Appendix XII of this Agreement, Seller’s supplier diversity spend target for work supporting the Project is ___%.

C. Contract Price

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year and the price for Deemed Delivered Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

D. Delivery Term Contract Quantity Schedule

Length of Delivery Term (in Contract Years):

Contract Year	Contract Quantity (MWh)¹
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

¹For a Baseload Product, the minimum qualifying Contract Quantity should be equivalent to at least an eighty percent (80%) Capacity Factor.

E. Collateral (as described in the RAM Protocol Agreement, under Section V.C. RAM PPA Terms and Conditions)

- Project Development Security (provide dollar amount)

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

- Delivery Term Security (provide dollar amount)

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

F. Buyer Bid Curtailment and Buyer Curtailment Orders.

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as the Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

- PMax of the Project: ____MW
- Minimum operating capacity: ____MW
- Ramp Rate: ____MW/Minute

[For As-Available Products]

- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): _____

[For Baseload Products]

- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): _____
- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).

Other Requirements:

- Maximum number of hours annually for Buyer Curtailment Periods: unlimited hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q).
- Start-Up Time (if applicable): _____Minutes
- Minimum Run Time after Start-Up (if applicable): _____Minutes

- Minimum Down Time after Shut-Down (if applicable): _____ Minutes

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Notices List

Name: *[Seller's Name]*, a *[include place of formation and business type]* (“Seller”)

Name: Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”)

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:

Delivery Address:

Street:

77 Beale Street, Mail Code N12E

City: State: Zip:

San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177

Attn:

Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements

Phone:

Phone: (415) 973-7780

Facsimile:

Facsimile: (415) 972-5507

Email:

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn: Azmat Mukhtar (ASM3@pge.com)
Manager, Electric Settlements

Phone:

Phone: (415) 973-4277

Facsimile:

Facsimile: (415) 973-2151

Email:

Scheduling:

Scheduling:

Attn:

Attn: Christopher McNeece (CMM4@pge.com)

Phone:

Phone: (415) 973-4072

Facsimile:

Facsimile:

Email:

Payments:

Payments:

Attn:

Attn: Azmat Mukhtar (ASM3@pge.com)
Manager, Electric Settlements

Phone:

Phone: (415) 973-4277

Facsimile:

Facsimile: (415) 973-2151

Email:

Wire Transfer per Section 8:

BNK:
ABA:
ACCT:

Electronic funds transfer via ACH:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:

Phone:
Facsimile:
Email:

With additional Notices of an Event of Default to Contract Manager:

Attn: _____
Phone: _____
Facsimile: _____
Email: _____

Wire Transfer per Section 8:

BNK:
ABA:
ACCT:

Electronic funds transfer via ACH:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn: PG&E Credit Risk Management

Phone: (415) 973-4071
Facsimile:
Email: pgeriskcredit@exchange.pge.com

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377
Facsimile: (415) 972-5952

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between PG&E and Seller, as of the Execution Date set forth in the Cover Sheet. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i)(G). [*For As-Available Product only*]

1.2 “Additional Extension” has the meaning set forth in Section 3.1(c)(ii).

1.3 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.4 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.5 “Ancillary Services” has the meaning set forth in the CAISO Tariff.

1.6 “Arbitration” has the meaning set forth in Section 12.3.

1.7 “As-Available Non-Peaking” Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and less than ninety-five percent (95%) of expected output is in the Peak and Mid-Day periods, as defined in Section 4.2.

1.8 “As-Available Peaking” Product is As-Available Product with a Capacity Factor of eighty percent (80%) or less averaged over all TOD Periods and ninety-five percent (95%) or more of expected output is in the Peak and Mid-Day periods, as defined in Section 4.2.

1.9 “As-Available Product” means an As-Available Non-Peaking Product or an As-Available Peaking Product that is powered by one of the following sources, except for a *de minimis* amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric potential derived from small conduit water distribution facilities that do not have storage capability, or (d) other variable sources of energy that are contingent upon natural forces other than geothermal. Subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive, the Energy component of As-Available Product from the Project whenever such Energy is capable of being generated from the Project. In contrast to Baseload Product, the Seller does not control the availability of fuel supply to the Project producing As-Available Product and lacks the ability to store energy and control the rate of output.

1.10 “Automated Clearing House” or “ACH” shall mean the automated clearing house as designated by Buyer and agreed upon by the Parties.

1.11 “Availability Workbook” has the meaning set forth in Appendix IX.

1.12 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product. *[For As-Available Product facilities only]*

1.13 “Available Capacity” means the expected amount of Energy to be produced from the Project, expressed in megawatts. *[For Baseload Product facilities and small hydro facilities]*

1.14 “Balancing Authority” has the meaning set forth in the CAISO Tariff.

1.15 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.16 “Baseload” means a Product for which the Energy delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week and has a Capacity Factor (averaged over all TOD Periods) greater than or equal to eighty percent (80%).

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

1.18 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local 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.

1.19 “Buyer” has the meaning set forth in the Cover Sheet.

1.20 “Buyer Bid Curtailment” means Buyer as SC communicates a curtailment instruction to the Seller, requiring Seller to produce less Energy from the Project than the CAISO final market forecast amount to be produced from the Project for a period of time, and Buyer as the SC either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final-market Energy forecasted to be produced from the Project. However, if the Project is subject to a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same period of time, then Buyer Bid Curtailment shall not include any Energy that is subject to such Planned Outage, Forced Outage, Force Majeure or Curtailment Period.

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

1.22 “Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.23 “Buyer’s Notice of First Offer Acceptance” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.24 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

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

1.26 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the Project.

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

1.28 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case, “CAISO Penalties” do not include the costs and charges related to scheduling and Imbalance Energy as addressed in Section 4.6(b) of this Agreement.

1.29 “CAISO Revenues” means the net amount resulting from (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement, which amount may result in a negative or positive value.

1.30 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.31 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.32 “Capacity Attributes” means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce any and all Product, including any accounting construct so that the maximum amount of Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority

under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

1.33 "Capacity Factor" has the meaning set forth in Section 4.3. ***[For Baseload Product only]***

1.34 "Capacity Test" has the meaning set forth in Appendix IV-3 attached hereto. ***[For Baseload Product only]***

1.35 "CEC" means the California Energy Commission or its successor agency.

1.36 "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.37 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.38 "Commercial Operation" means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement and in the case of Baseload Product, as further provided in Appendix IV-3.

1.39 "Commercial Operation Date" means ***[For As-Available Products use the following language]*** the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, (b) notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, and (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto. ***[For Baseload Products use the following language]*** the date on which (a) Seller notifies Buyer that Commercial Operation has commenced, (b) Seller notifies Buyer that all Reliability Network Upgrades identified in the Project's Generator Interconnection Agreement have been completed, (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto, and (d) Buyer accepts in writing the results of Seller's initial Capacity Test report in compliance with the Capacity Test Procedure as provided in Appendix IV-3 hereto.

1.40 "Compliance Costs" means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), 3.4(b) (EIRP Requirements), and 10.2(b) (ERR), including registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date. Compliance

Costs do not include any amounts designated in the Project's full capacity deliverability study to obtain FCDS nor any costs and expenses incurred by Seller for FCDS studies.

1.41 "Compliance Cost Cap" has the meaning set forth in Section 3.1(o).

1.42 "Condition Precedent" means each of, or one of, the conditions set forth in Section 2.5(a)(i) through (iv) and "Conditions Precedent" shall refer to all of the conditions set forth in Section 2.5(a)(i) through (iv).

1.43 "Confidential Information" has the meaning set forth in Section 10.7(a)

1.44 "Construction Start Date" means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Appendix IV-1.

1.45 "Contract Capacity" has the meaning set forth in Section 3.1(f).

1.46 "Contract Capacity Commitment" means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of, for a New Project, the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.9(c)), and for an Existing Project, the Expected Initial Energy Delivery Date specified on the Cover Sheet.

1.47 "Contract Price" means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Cover Sheet.

1.48 "Contract Quantity" means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e) and Cover Sheet Section D .

1.49 "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.50 "Costs" means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.51 "Cover Sheet" means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

1.52 "CPUC" or "Commission" means the California Public Utilities Commission, or successor entity.

1.53 "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 purposes of this section, 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.

1.54 "CRS" means the Center for Resource Solutions or any successor entity performing similar functions.

1.55 "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.

1.56 "Cure" has the meaning set forth in Section 8.5(b).

1.57 "Cured Performance Measurement Period" has the meaning set forth in Section 3.1(e)(ii)(C).

1.58 "Cure Payment Period" has the meaning set forth in Section 3.1(e)(ii)(C)(III).

1.59 "Curtailed Order" means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party to curtail Energy deliveries, which may come in the form of a request to return to Schedule consistent with the CAISO Tariff, for reasons including, (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected, or (iii) any warning, forecast, or anticipated over-generation conditions, including a request from CAISO to manage over-generation conditions, provided that this subsection (a) (iii) shall not include Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's or distribution operator's transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Generator Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

1.60 "Curtailment Period" means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.61 "Damage Payment" means the dollar amount equal to the amount to be posted as Project Development Security pursuant to Section 8.4(a)(i) hereof.

1.62 "DA Price" means the resource specific locational marginal price ("LMP") applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

1.63 "DA Scheduled Energy" means the Day-Ahead Scheduled Energy as defined in the CAISO Tariff.

1.64 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4[(b)][(c)][(iii)](C).

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

1.66 "Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation provided pursuant to Section 3.1(l)(i)(G) and using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Project, the Deemed Delivered Energy shall be zero (0). For clarity, Deemed Delivered Energy shall not include Delivered Energy that is less than the instructed MWh for a Buyer Curtailment Order or Buyer Bid Curtailment during a Buyer Curtailment Period. Deemed Delivered Energy shall be calculated as follows:

Deemed Delivered Energy ("DDE") = A - Max (B,C), where:

A = EIRP Forecast, converted to MWh

B = MWh as instructed during a Buyer Curtailment Period. For the purpose of calculating DDE, the MWh as instructed during a Buyer Curtailment Period shall be the total Expected Energy, as defined in the CAISO Tariff.

C = Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period.

1.67 “Defaulting Party” means the Party that is subject to an Event of Default.

1.68 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

1.69 “Deliverability Assessment” has the meaning set forth in the CAISO Tariff.

1.70 “Deliverability Finding Deadline” shall be two (2) calendar years after the RA Start Date. The Deliverability Finding Deadline shall be no later than December 31, 2024.

1.71 “Delivered Energy” means all Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

1.72 “Delivery Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.73 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

1.74 “Delivery Term” has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

1.75 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

1.76 “Disclosing Party” has the meaning set forth in Section 10.7.

1.77 “Dispatch Instruction” has the meaning set forth in the CAISO Tariff.

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

1.79 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner’s meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

1.80 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

1.81 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.

1.82 “Early Termination Date” has the meaning set forth in Section 5.2.

1.83 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.5(a) have been satisfied or waived in writing by both Parties.

1.84 “Effective FCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.85 “Effective PCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.86 “EIRP Forecast” means the final forecast of the Energy to be produced by the Project prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol and communicated to Buyer or Third-Party SC for use in submitting a Schedule for the output of the Project in the Real-Time Market.

1.87 “Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.88 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if connecting to a part of the Participating TO’s electric system that is not part of the CAISO Grid.

1.89 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.90 “Eligible Intermittent Resources Protocol” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.91 “Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must 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.

1.92 “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.

1.93 “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).

1.94 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

1.95 “Energy Only Status Seller” or “EOS Seller” means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

1.96 “Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

1.97 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.98 “EPC Contractor” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s Affiliate(s) may serve as the EPC Contractor.

1.99 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.100 “Event of Default” has the meaning set forth in Section 5.1.

1.101 “Excess Deemed Delivered Energy” has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.102 “Excess Deemed Delivered Energy Price” has the meaning set forth in Section 4.5(a)(ii)(B). ***[For As-Available Product only]***

1.103 “Excess Delivered Energy” has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.104 “Excess Delivered Energy Price” has the meaning set forth in Section 4.5(a)(ii)(A). ***[For As-Available Product only]***

1.105 “Excess Energy” has the meaning set forth in Section 4.5(a)(i). ***[For As-Available Product only]***

1.106 “Excess Network Upgrade Costs” has the meaning set forth in Section 3.9(f)(ii).

1.107 “Excess Sale” means the type of transaction described in Section 3.1(b)(ii).

1.108 “Exclusivity Period” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

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

1.110 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.111 “Exempt Wholesale Generator” has the meaning provided in 18 C.F.R. Section 366.1.

1.112 “Existing Project” is a Project that has achieved Commercial Operation on or prior to the Execution Date.

1.113 “Expected Construction Start Date” has the meaning set forth in the Cover Sheet.

1.114 “Expected FCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Full Capacity Deliverability Status.

1.115 “Expected PCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

1.116 “Expected Initial Energy Delivery Date” is the date specified on the Cover Sheet for an Existing Project.

1.117 “Expected Net Qualifying Capacity” means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix XIV.

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

1.119 “Final True-Up” means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.120 “First Offer” has the meaning set forth in Section 3.9(e)(1) or Section 11.1(b)(i), as applicable.

1.121 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(viii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(p).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, including a delay that could constitute a Permitting Delay unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to complete interconnection or Electric System Upgrades by the Guaranteed Commercial Operation Date, including a delay that could constitute a Transmission Delay, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(ix) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(x) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.122 "Force Majeure Extension" has the meaning set forth in Section 3.9(c)(ii)(C).

1.123 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

1.124 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.125 "Forecasting Penalty" has the meaning set forth in Section 4.6(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty. *[For As-Available Product only]*

1.126 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

1.127 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

1.128 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

1.129 "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

1.130 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.131 "Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.132 "Generator Interconnection Agreement" or "GIA" means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller's interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating

Transmission Owner governing the terms and conditions of Seller's interconnection with the Participating TO's distribution system, including any description of the plan for interconnecting to Participating TO's distribution system.

1.133 "Generator Interconnection Process" or "GIP" means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO's tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO's distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project's Contract Capacity, the term "GIP" shall then apply to such successor procedure.

1.134 "Geothermal Reservoir Report" means a report obtained by Seller from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential at the Site. *[For Geothermal Projects only]*

1.135 "GEP Cure" has the meaning set forth in Section 3.1(e)(ii)(C).

1.136 "GEP Damages" has the meaning set forth in Appendix V.

1.137 "GEP Failure" means Seller's failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.138 "GEP Shortfall" means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

1.139 "Good Utility Practice" has the meaning provided in the CAISO Tariff.

1.140 "Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.141 "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.

1.142 "Governmental Charges" has the meaning set forth in Section 9.2.

1.143 "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 (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) 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;¹ (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 Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, 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.

1.144 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(i).

1.145 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii).

1.146 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

1.147 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

1.148 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

1.149 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

1.150 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

1.151 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

1.152 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

1.153 "Interconnection Point" means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

¹ 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.

1.154 “Interconnection Study” means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider’s tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner’s electric grid.

1.155 “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.

1.156 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

1.157 “Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

1.158 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

1.159 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15(519), or its successor publication.

1.160 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.161 “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 purposes of Sections 1.53 “CPUC Approval,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.162 “Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

1.163 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.164 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in

determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

1.165 “Manager” has the meaning set forth in Section 12.2(a).

1.166 “Master File” has the meaning set forth in the CAISO Tariff.

1.167 “Maximum Issuing Amount” means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer’s prior written consent.

1.168 “Milestone(s)” means the key development activities required for the construction and operation of the Project, as set forth in Section B(i)(b) of the Cover Sheet.

1.169 “Minimum Load” has the meaning set forth in the CAISO Tariff.

1.170 “Minimum Down Time” has the meaning set forth in the CAISO Tariff.

1.171 “Monthly Payment for Excess Energy” has the meaning set forth in Section 4.5(b). ***[For As-Available Product only]***

1.172 “Monthly Period” has the meaning set forth in Section 4.2.

1.173 “Monthly TOD Payment” has the meaning set forth in Section 4.4.

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

1.175 “MW” means megawatt in alternating current or AC.

1.176 “MWh” means megawatt-hour.

1.177 “NERC” means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

1.178 “Net Rated Output Capacity” means the Project’s Energy production capability as measured at the CAISO revenue meter in any Capacity Test inclusive of deductions for all applicable Electrical Losses. ***[Applies to Baseload Product only]***

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

1.180 “Network Upgrades” has the meaning set forth in the CAISO Tariff or the Participating TO’s tariff, as applicable.

1.181 “New Project” is a Project that has not achieved Commercial Operation on or prior to the Execution Date.

- 1.182 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.
- 1.183 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.184 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The Cover Sheet contains the names and addresses to be used for Notices.
- 1.185 “Notice to Proceed” means the full notice to proceed, provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin mobilization and construction of the Project without any delay or waiting periods.
- 1.186 “Operational Deliverability Assessment” has the meaning set forth in the CAISO Tariff.
- 1.187 “Outage Notification Procedures” means the procedures specified in Appendix VI, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.188 “Partial Capacity Deliverability Status” or “PCDS” has the meaning set forth in the CAISO Tariff.
- 1.189 “Partial Capacity Deliverability Status Amount” means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section A of the Cover Sheet.
- 1.190 “Partial Capacity Deliverability Status Finding” or “PCDS Finding” means a written confirmation from the CAISO that the Project is eligible for PCDS.
- 1.191 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff. ***[For As-Available Product only]***
- 1.192 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.
- 1.193 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.
- 1.194 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I.
- 1.195 “Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii).
- 1.196 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).
- 1.197 “Permit Failure” has the meaning set forth in Section 3.9(d). ***[For New Projects only]***
- 1.198 “Permitting Delay” has the meaning set forth in Section 3.9(c)(ii)(A).

1.199 “Permitted Extensions” means extensions to the Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, or Force Majeure Extension, as applicable, pursuant to Section 3.9(c).

1.200 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.201 “PMax” has the meaning set forth in the CAISO Tariff.

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

1.203 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.204 “Preschedule Day” has the meaning set forth in Section 3.4[(b)][(c)](iii).

1.205 “Product” means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.206 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.207 “Progress Report” means the report similar in form and content to that attached hereto as Appendix III.

1.208 “Project” means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Cover Sheet.

1.209 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).

1.210 “Project Specifications” has the meaning set forth in Appendix XIII.

1.211 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.212 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

1.213 “RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(e)(ii).

1.214 “RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

1.215 “RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

1.216 “RA Start Date” shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

1.217 “RA Value” means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix XIV.

1.218 “Ramp Rate” has the meaning set forth in the CAISO Tariff.

1.219 “Real-Time Market” means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

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

1.221 “Reductions” has the meaning set forth in Section 4.7(b).

1.222 “Referral Date” has the meaning set forth in Section 12.2(a).

1.223 “Reliability Coordinator” has the meaning set forth in the CAISO Tariff.

1.224 “Reliability Must-Run Contract” has the meaning set forth in the CAISO Tariff. [***For Baseload Product only***]

1.225 “Reliability Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.226 “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 Law.

1.227 “Replacement Capacity Rules” means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

1.228 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

- 1.229 “Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.
- 1.230 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.
- 1.231 “Resource Adequacy Standards” means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.
- 1.232 “Resource-Specific Settlement Interval LMP” has the meaning set forth in the CAISO Tariff.
- 1.233 “Retained Revenues” has the meaning set forth in Section 4.7(c).
- 1.234 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.
- 1.235 “S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.
- 1.236 “Satisfaction Date” has the meaning set forth in Section 2.6.
- 1.237 “Schedule” has the meaning set forth in the CAISO Tariff.
- 1.238 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” of the CAISO Tariff, as amended from time to time.
- 1.239 “SEC” means the U.S. Securities and Exchange Commission.
- 1.240 “Self-Schedule” has the meaning set forth in the CAISO Tariff.
- 1.241 “Seller” has the meaning set forth in the Cover Sheet.
- 1.242 “Seller Excuse Hours” means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.
- 1.243 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).
- 1.244 “Settlement Amount” means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.
- 1.245 “Settlement Interval” has the meaning set forth in the CAISO Tariff.
- 1.246 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report. ***[For As-Available Product only]***

- 1.247 “Shared Contract Year” has the meaning set forth in section 3.1(e)(ii)(C)(I).
- 1.248 “Site” means the location of the Project as described in the Cover Sheet.
- 1.249 “Start-up” means the action of bringing a Unit from non-operation to operation at or above the Unit’s Minimum Load, or with positive generation output if Minimum Load is zero.
- 1.250 “Surplus Delivered Energy” means, in any Settlement Interval, the Delivered Energy that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by a Settlement Interval.
- 1.251 “Supply Plan” has the meaning set forth in the CAISO Tariff.
- 1.252 “System Emergency” has the meaning set forth in the CAISO Tariff.
- 1.253 “Term” has the meaning provided in Section 2.6.
- 1.254 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.
- 1.255 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
- 1.256 “Test Period” means the period of not more than ninety (90) consecutive days, as extended by the Initial Extension and Additional Extension according to Section 3.1(c)(ii), as applicable, which period shall commence upon the first date that the following have occurred (a) the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid, and (b) the items in Section 3.4(a)(i)(E) have been fulfilled and implemented, and shall end upon the Initial Energy Delivery Date.
- 1.257 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.
- 1.258 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.
- 1.259 “TOD Factors” has the meaning set forth in Section 4.4(a).
- 1.260 “TOD Periods” has the meaning set forth in Section 4.2.
- 1.261 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.
- 1.262 “Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.
- 1.263 “Transmission Delay” has the meaning set forth in Section 3.9(c)(ii)(B).

1.264 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

1.265 “Uninstructed Imbalance Energy” shall have the meaning set forth in the CAISO Tariff.

1.266 “Unit” means the technology used to produce the Products, which are identified in the Cover Sheet for the Transaction entered into under this Agreement.

1.267 “Variation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Delivered Energy for the Settlement Interval. [*For Baseload Product only*]

1.268 “WECC” means the Western Electricity Coordinating Council or successor agency.

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

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

1.271 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.272 “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.

1.273 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(a) The term “month” or “Month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

2.3 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.7 hereof, the Term shall not commence until the occurrence of all of the following:

(i) this Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) the advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix VIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.5(b), Section 5.2 or Section 11.1 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security as applicable, is released and/or returned as applicable (the “Satisfaction Date”) or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (“Indemnities”) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 (“Confidentiality”) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1(b) shall survive the Satisfaction Date for three (3) years.

2.7 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (i) Sections 3.9(a)(vii), 5.1(a)(iv)-(v), and 5.1(b)(iv);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.7;
- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.16; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is set forth in the Cover Sheet. Buyer shall have exclusive rights to all Product during the Delivery Term.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or Variations, as applicable, or (2) sell Product from the Project to a third party other than in connection with Energy Deviations or Variations, as applicable. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XII. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If "Full Buy/Sell" is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product as measured in kilowatt-hours, net of station Use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, "Delivery Term" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller's demonstration of satisfaction of the items listed below in this Section 3.1(c)(i) ("Initial Energy Delivery Date") and continuing until the end of the tenth, fifteenth, or twentieth Contract Year (as applicable, based on the Cover Sheet election) unless terminated pursuant to the terms of this Agreement; provided that the Expected Initial Energy Delivery Date may be extended pursuant to Section 3.1(c)(ii). The Initial Energy Delivery Date shall be the later of the (A) date that the Buyer receives the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II and (B) the date listed as the Initial Energy Delivery Date on the Initial Energy Delivery Date Confirmation Letter. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (I) Seller notifies Buyer that Commercial Operation has occurred; (II) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as

applicable; (III) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (IV) all of the applicable Conditions Precedent in Section 2.5(a) have been satisfied or waived in writing; (V) for resources that are already under a contract as of the Execution Date, that existing contract must have expired by its own terms before the Initial Energy Delivery Date; (VI) Seller shall have demonstrated satisfaction of Seller's other obligations in this Agreement that commence prior to or as of the Delivery Term; and (VII) unless Seller has been directed by Buyer to not participate in the Participating Intermittent Resource Program, Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent the Participating Intermittent Resource Program exists for the Project's technology type at such time as the conditions in subsections (I) through (VI) of this Section 3.1(c)(i) are satisfied. ***[Subsection (VII) applicable to solar, wind, or hydro Projects only]***

(ii) Extensions of Test Period and Initial Energy Delivery Date. In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the Expected Initial Energy Delivery Date, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Test Period and Expected Initial Energy Delivery Date ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the Expected Initial Energy Delivery Date. In the event that Seller requires an additional extension of the Test Period and Expected Initial Energy Delivery Date beyond the Initial Extension, Seller may request a further extension of the Test Period and Expected Initial Energy Delivery Date from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter," attached hereto as Appendix II, on the Initial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in Section D of the Cover Sheet ("Delivery Term Contract Quantity Schedule"), which amount is inclusive of outages.

[Use the following bracketed language for As-Available Product delivered by all facilities]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" is equal to the product of (x) and (y), where (x) is one hundred sixty percent (160%) of the average of the Contract Quantities applicable to the two (2) Contract Years comprising the Performance Measurement Period ***[Photovoltaic facilities only to use the then-applicable Contract Quantities for the Performance Measurement***

Period], and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = $(160\% \times \text{average of the Contract Quantities in MWh in Performance Measurement Period}) \times [(\text{Hrs in Performance Measurement Period} - \text{Seller Excuse Hrs in Performance Measurement Period}) / \text{Hrs in Performance Measurement Period}]$

[Use the following bracketed language for Baseload Product only]

[(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production in each Contract Year during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” is equal to the product of (x) and (y), where (x) is ninety percent (90%) of the Contract Quantity, and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = $(90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in Performance Measurement Period} - \text{Seller Excuse Hrs in Performance Measurement Period}) / \text{Hrs in Performance Measurement Period}]$

[Use the following subparts (B) and (C) to Section 3.1(e)(ii) for both As-Available and Baseload Products and all technologies]

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller’s Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly provide Notice to Seller of such failure, provided that Buyer’s failure to provide Notice shall not constitute as a waiver of Buyer’s rights to collect GEP damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, subject to adjustment for Seller Excuse Hours over the next following Contract Year, as set forth in the formula below (“GEP Cure”).

GEP Cure = $(90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in next following Contract Year} - \text{Seller Excuse Hrs in next following Contract Year}) / \text{Hrs in next following Contract Year}]$

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix V (“GEP Damages Calculation”). [If Seller provides a GEP Cure or pays GEP Damages for the Contract Years in a particular Performance Measurement Period (“Cured Performance Measurement Period”), then for purposes of calculating the Guaranteed Energy Production in the following Performance Measurement Period, the amount of Delivered Energy plus Deemed Delivered Energy in the second Contract Year of the Cured Performance Measurement Period, which is also the first Contract Year of the following

Performance Measurement Period (“Shared Contract Year”), shall be deemed equal to the greater of (X) the Delivered Energy plus Deemed Delivered Energy, if any, for the Shared Contract Year, subject to adjustment for Seller Excuse Hours, or (Y) eighty percent (80%) of Contract Quantity in the Shared Contract Year, where X and Y are calculated as follows:

$X = (\text{Delivered Energy} + \text{Deemed Delivered Energy in Shared Contract Year}) \times [\text{Hrs in Shared Contract Year} / (\text{Hrs in Shared Contract Year} - \text{Seller Excuse Hours in Shared Contract Year})]$ or;

$Y = 80\% \times \text{Contract Quantity in Shared Contract Year}$

For the avoidance of doubt, the calculation set forth above for the amount of Delivered Energy plus Deemed Delivered Energy for the Shared Contract Year shall not apply to the cumulative GEP Shortfall under Section 5.1(b)(vi)(B).]

[Bracketed text above applies to As-Available Product only.]

(II) The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(III) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice (the “Cure Payment Period”). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi) within the ninety (90) day period, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(vi)(B).

[The following bracketed version of Section 3.1(f) “Contract Capacity” applies to Full Buy/Sell transactions of As-Available Product only]

[(f) Contract Capacity. The generation capability designated for the Project shall be the contract capacity in MW designated in the Cover Sheet, (the “Contract Capacity”), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.]

[The following bracketed version of Section 3.1(f) “Contract Capacity” applies to all Baseload Products and Excess Sale transactions of As-Available Products.]

/(f) Contract Capacity.

(i) Contract Capacity. The capacity of the Project at any time shall be the lower of the following: (A) the contract capacity in MW designated in the Cover Sheet or (B) the Net Rated Output Capacity of the Project (the “Contract Capacity”), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

(ii) Net Rated Output Capacity Testing. Buyer shall have the right to request a Capacity Test as set forth in Appendix IV-3, to determine the Net Rated Output Capacity no more than one time per Contract Year. The resulting Net Rated Output Capacity shall be used to determine the Contract Capacity, in accordance with Section 3.1(f)(i) above, and shall remain in effect until the next Capacity Test requested by Buyer. Appendix IV-3 sets forth the agreements of Buyer and Seller with respect to the performance of Capacity Tests.]

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer’s prior written consent. The Project is further described in Appendix XIII.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6.

Seller shall be deemed to have relinquished possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer’s Interconnection Facilities, including metering facilities, to be maintained; and (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

(ii) Coordination with Buyer.

(A) Seller shall (I) provide to Buyer copies of all material correspondence related thereto; and (II) provide Buyer with written reports of the status of the GIA on a monthly basis. The foregoing shall not preclude Seller from executing a GIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(B) Excess Network Upgrade Costs. Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or the interconnection agreement tendered to Seller by the Participating Transmission Owner that may give rise to a termination right of Buyer under Section 3.9(f)(i). Within that same period Seller shall also provide Buyer a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost pursuant to Section 3.9(f)(i), with a failure to provide such an election deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.

(i) Performance Excuses.

(i) Seller Excuse. For Seller selling As-Available Product, Seller shall be excused from achieving the Guaranteed Energy Production only for the applicable time period during Seller Excuse Hours. For Seller selling Baseload Product, Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor only for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer even if Buyer does not accept and/or pay for the underlying energy per Section 3.1(f) or for Baseload Product only, pays something other than the Contract Price. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii), provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Project’s metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance with Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer’s payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller’s next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer’s subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller’s obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(viii) 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.

(l) Access to Data and Installation and Maintenance of Weather Station.

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, *[inverter]* *[bracketed language applies to solar photovoltaic Projects only]* and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (G) of this list;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; provided that if Buyer is unable to access the Project's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(C) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(D) full, real-time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application, or its successor system;

(E) net plant electrical output at the CAISO revenue meter;

[Subparts (F) through (G) below shall only apply to wind and solar facilities]

(F) instantaneous data measurements at sixty (60) second or increased frequency for the parameters set forth in Appendix X ("Telemetry Parameters for Wind or Solar Facilities"), which measurements shall be provided by Seller to Buyer in consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup; and

(G) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of *[the following bracketed language applies to solar facilities only]* [solar insolation, temperature, wind speed, and, if applicable, wind direction] *[the following bracketed language applies to wind facilities only]* [wind speed, wind direction, ambient temperature, atmospheric pressure]. Such equation shall take into account the expected availability of the facility.

[The following bracketed language applies to As-Available Product only]

[For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to

Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix IX ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report.] Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(l)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its scheduling purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

[The following Sections 3.1(l)(iv) – (vi) apply to As-Available Product only]

[(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement, and for wind Projects, each wind turbine must be equipped with meteorological measurement equipment (e.g. anemometers) which are individually linked to Seller's plant information system. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share

Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) ***[Include the following bracketed language for solar Projects only]*** [total global horizontal irradiance, plane of array or direct normal insolation as is applicable for project type, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in fog areas (forward scatter sensor) and humidity at the Site] ***[Include the following bracketed language for wind Projects only]*** [wind speed and direction (as close to hub height as possible), standard deviation of wind direction, peak instantaneous values, air temperature, barometric pressure, and humidity at the Site], as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure ***[Include the following bracketed language only if winter season output of solar Project is an issue]*** [and visibility in fog areas] All data, except peak values, should be 1-second samples averaged into 10-minute periods; (B) elevation, latitude and longitude of the weather station; and (C) any other data reasonably requested by Buyer.]

(m) Prevailing Wage. Seller shall use reasonable efforts to ensure that all Electricians hired by Seller, Seller's contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code.

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Compliance Cost Cap. Costs applicable to the Compliance Cost Cap are only those costs applicable under the definition of "Compliance Costs" and are new costs associated with a change in Law occurring after the Execution Date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at ten thousand dollars (\$10,000.00) per MW of Contract Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars (\$20,000.00) per MW of Contract Capacity (collectively, the "Compliance Cost Cap"). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer's request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer's initiation of dispute resolution under Article 12, or (iii) Buyer's waiver of Seller's performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement. Any reimbursement by Buyer to Seller referenced above in this Section 3.1(o) shall be subject to CPUC approval, and the amount

of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap and which give rise to the payment that is the subject of the above-referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

(p) Curtailment Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, provided that (A) a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet; (B) the Buyer Curtailment Period shall be for unlimited hours cumulatively per Contract Year (which may or may not be consecutive); and (C) Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article 4. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order provided in compliance with Section 3.1(p)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh (for example, the Contract Price adjusted by TOD Factors) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(q) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(p)(ii) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

3.2 Green Attributes.

(a) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

(b) Biomethane Transactions.

(i) For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.

(ii) For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

3.3 Resource Adequacy.

(a) During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes from the Project, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided

that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this Agreement and subject to an Event of Default under Sections 5.1(b)(vii) - (viii), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix XIV. The RA Deficiency Amount is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times [\text{Expected Net Qualifying Capacity (MW)} - \text{actual Net Qualifying Capacity (MW)}].$$

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller and shall not be subject to the Compliance Cost Cap. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security obligation under Section 8.4(a)(ii) or (iii), as applicable.

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. If Seller has elected Energy Only Status or Partial Capacity Deliverability Status on the Cover Sheet, Seller shall continue to receive payment based on the Energy Only Status TOD Factors set forth in Section 4.4 regardless of whether or not Seller obtains FCDS.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy from the Project according to the terms of this Agreement.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

[The following Section (b) “EIRP Requirements” applies to EIRP-eligible facilities only]

[(b) EIRP Requirements. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller’s receipt of such notice of certification. As of the first date of the Test Period and until the Project receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued by the CAISO for a Participating Intermittent Resource. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols issued by the CAISO for generating facilities providing energy on an intermittent basis; provided that, if multiple options exist, then Seller shall comply with any such protocols, rules or regulations as directed by Buyer. Throughout the Delivery Term, Buyer in its limited capacity as Seller’s Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller’s obligations as Seller’s Scheduling Coordinator and to the extent such actions are at *de minimis* cost to Buyer.]

[(b)][(c)] Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer’s Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller’s Scheduling Coordinator under the CAISO Tariff

and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement, the CAISO Tariff, and all requirements of EIRP (if applicable).

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. ***[The following bracketed language applies to As-Available solar or wind Projects only]*** [Seller’s availability forecasts below shall include Project availability and updated status of ***[The following bracketed language applies to solar Projects only]*** [photovoltaic panels, inverters, transformers, and any other equipment that may impact availability] or ***[The following bracketed language applies to wind Projects only]*** [transformers, wind turbine unit status, and any other equipment that may impact availability].] ***[The following bracketed language applies to As-Available Product only]*** [To avoid Forecasting Penalties set forth in Section 4.6(c)(iii),] Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term (“First Annual Forecast Date”), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by the earlier of ninety (90) days before the beginning of the Test Period or forty-five (45) days before Buyer’s monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer’s monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller or Seller’s agent shall provide a binding day ahead forecast of Available Capacity (the “Day-Ahead Availability Notice”) to Buyer or Third-Party SC (as applicable) via Buyer’s internet site, as provided in Appendix VI, for each day no later than fourteen (14) hours before the beginning of the “Preschedule Day” (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday

(5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Preschedule Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer’s Internet site set forth in Appendix VI. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer to the extent Seller’s failure contributes to Imbalance Energy, Seller shall be subject to the Forecasting Penalties set forth in Section 4.6(c).

(D) Real-Time Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than 60 days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 3.4[(b)][(c)](iii)(D), then Seller shall send such communications by telephone to Buyer’s Real-Time Desk and shall be sent to Buyer’s internet site as set forth in Appendix VI.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller’s SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and

the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electric Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. All output from the Project must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer (which must be dedicated solely to the Project) nearest to the Interconnection Point that exclusively measures output for the Project described herein. All Delivered Energy purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Buyer, in its capacity as Scheduling Coordinator, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the Scheduling and Logging system for the CAISO ("SLIC") or successor system. As Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with [Section 3.4(b)(c)(iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4(b)(c)(iii)(B), (Monthly Forecast of Available Capacity)] [*Applies to intermittent facilities only*] [3.4(b)(c)(iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4(b)(c)(iii)(B), (Monthly Forecast of Available Capacity)] [*Applies to all facilities other than intermittent facilities*] and implementing the notification procedures set forth in Appendix VI no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Forced Outages. Seller shall notify Buyer of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix VI. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix VI. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis also in accordance with the notification provisions in Appendix VI.

(e) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the

particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) Communications with CAISO. Buyer shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix VI, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, [fuel consumption,][*Bracketed language for applicable Baseload Product only*] efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

- (a) Seller, at no cost to Buyer, shall be responsible to:
- (i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO, the Participating Transmission Owner, and the applicable distribution provider for the Interconnection Facilities to Schedule and deliver the Product.

(iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(v) At Buyer's request, provide to Buyer the Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Seller shall Notify Buyer of the Construction Start Date by sending to Buyer a written Certification substantially in the form provided in Appendix IV-1 as soon as practical upon issuance of Notice to Proceed.

(vii) Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the month in which the Construction Start Date has occurred, provide to Buyer a quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such quarterly reports and discuss Seller's construction progress. The quarterly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

(viii) Within fifteen (15) days after the close of each month following the Construction Start Date until the Commercial Operation Date, provide to Buyer a monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

[The following Section 3.9(a)(ix) applies to geothermal Projects only]

[(ix) Provide to Buyer copies of all Geothermal Reservoir Reports and any revisions thereto, for the time period beginning on the Effective Date and ending on the last day of the first Contract Year.]

(b) Buyer shall have the right, but not the obligation, to:

(i) Notify Seller in writing of the results of the review performed pursuant to Section 3.9(a)(v) within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

(c) Guaranteed Commercial Operation Date.

(i) The Parties agree time is of the essence in regards to the Agreement. As such, Seller shall have demonstrated Commercial Operation per the terms of Appendix IV-2 by the date that is no later than thirty-six (36) months after the Effective Date of this Agreement, except as such date may be extended on a day for day basis for not more than a cumulative six (6) month period for a Permitted Extension (the “Guaranteed Commercial Operation Date”).

(ii) Permitted Extensions. The Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(A) Permitting Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for not more than six (6) months if Seller has used commercially reasonable efforts (including Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits and Seller has worked diligently to resolve the delay (“Permitting Delay”);

(B) Transmission Delay. The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than six (6) months if Seller has used commercially reasonable efforts (including compliance with all CAISO, PTO, FERC or other requirements, as applicable, and Seller’s timely submission of all required documents and applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades, if any, but such interconnection or Electric System Upgrades cannot be completed by the Guaranteed Commercial Operation Date, and such delay is not caused by Seller, and Seller has worked diligently to resolve the delay (“Transmission Delay”);

(C) Force Majeure Extension. The Guaranteed Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure (“Force Majeure Extension”); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request; provided further that Seller may not claim Force Majeure for any reason that was the basis for or would qualify as a Permitting Delay or a Transmission Delay.

(iii) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 3.9(c)(ii), such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Notice of Permitted Extension.

(A) In order to request a Permitting Delay or Transmission Delay (individually and collectively, “Delay”), Seller shall provide Buyer with Notice of the requested Delay no later than sixty (60) days prior to the Guaranteed Commercial Operation Date, which Notice must clearly identify the Delay being requested, the length of the Delay requested (up to six (6) months), and include information necessary for Buyer to verify the length and qualification of the Delay. Buyer shall use reasonable discretion to grant or deny the requested extension, and shall provide Seller Notice of its decision within a reasonable time.

(B) In the case of a Force Majeure Extension, if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(v) Failure to Meet Guaranteed Commercial Operation Date. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure, then Buyer shall be entitled to declare an Event of Default and collect a Termination Payment pursuant to Article Five.

[The following subsections (d) and (e) shall only apply to a New Project:]

[(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the earlier of the Expected Construction Start Date and the date that is six (6) months after the Effective Date final and non-appealable Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in the Cover Sheet, after using commercially reasonable efforts to do so (including timely filings with all applicable Governmental Authorities and timely payment of any required fees) (“Permit Failure”), Seller may make a Contract Capacity Commitment on the Expected Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the Contract Capacity set forth in the Cover Sheet, provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable Governmental Approvals that Seller has received as of the Expected Construction Start Date (as may be extended), and may not be under one (1) MW, and provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the Contract Capacity set forth in the Cover Sheet as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Expected Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Section 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule in the Cover Sheet shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller’s performance under the Agreement, including the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the Project pursuant to Sections 3.1(e)(ii) and 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of three (3) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the Contract Capacity set forth in the Cover Sheet, to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii)

below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice of First Offer Acceptance”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.]

(f) Excess Network Upgrade Cost Termination Right.

(i) Buyer has the right to terminate this Agreement by Notice on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study, or the GIA tendered to Seller by the Participating Transmission Owner, if such Interconnection Study or GIA as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of the Network Upgrades to Buyer, or any Participating Transmission Owner under the jurisdiction of the CAISO, including costs reimbursed to Seller by Buyer or any Participating Transmission Owner under the jurisdiction of the CAISO (“Aggregate Network Upgrade Costs”), may in the aggregate exceed one hundred and ten percent (110%) of the amount identified in the Interconnection Studies that were submitted with Seller’s original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars (\$100,000.00) (“Network Upgrades Cap”), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs. This termination right is irrespective of any subsequent amendments of such Interconnection Study or GIA or any contingencies or assumptions upon which such Interconnection Study or GIA is based. Buyer’s Notice to terminate will be effective five (5) Business Days after such Notice is given to Seller.

(ii) Notwithstanding anything to the contrary in this Section 3.9(f)(ii), Buyer shall have no right to terminate this Agreement under Section 3.9(f)(i), if (A) Seller concurrently with its provision of the relevant Interconnection Study or GIA, as applicable, pursuant to Section 3.1(h)(ii)(B), irrevocably agrees to pay to the Participating Transmission Owner the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Cost”) and (B) Seller enters into a GIA that states that Seller must pay all Excess Network Upgrade Costs without

reimbursement from the Participating Transmission Owner. For sake of certainty, if Seller agrees to the above-described payment for the Excess Network Upgrade Costs pursuant to this Section 3.9(f)(ii), such agreement shall not independently convey to Seller any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to Buyer pursuant to this Agreement.

(iii) Buyer shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, (A) if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but (B) FERC, CAISO, or any Participating Transmission Owner, as applicable, rejects Seller’s interconnection agreement, in whole or in part, or modifies Seller’s interconnection agreement in a manner that would make Seller unable to comply with Seller’s obligation pursuant to Section 3.9(f)(i). In order to be effective, Buyer’s Notice of termination must be given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Participating Transmission Owner.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year is set forth in Section C of the Cover Sheet.

For the avoidance of doubt, Seller shall not be compensated for any Surplus Delivered Energy.

(b) Test Period Payments. During the Test Period, Seller’s full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward to Seller in accordance with the schedule described in Section 6.1.

4.2 TOD Periods. The time of delivery periods (“TOD Periods”) specified below shall be referenced by the following designations:

Monthly Period	TOD PERIOD		
	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	A1	A2	A3
B. Oct. – Feb.	B1	B2	B3
C. March. – June	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. July – September;
- B. October – February; and
- C. March– June.

TOD Period Definitions. The TOD Periods are defined as follows:

- 1. **Peak** = hours ending 17 - 22 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
- 2. **Mid-Day** = hours ending 10 - 16 PPT all days in the applicable Monthly Period.

3. **Night** = hours ending 23 – 09 PPT all days in the applicable Monthly Period.

[Section 4.3 “Capacity Factor” below applies to Baseload Product only]

[4.3 Capacity Factor. The Capacity Factor shall be calculated by TOD Period and defined as the percentage amount resulting from Delivered Energy plus Deemed Delivered Energy, if any, in the applicable TOD Period divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable TOD Period minus Seller Excuse Hours in the applicable TOD Period (“Capacity Factor”):

$$\text{Capacity Factor} = (\text{Delivered Energy} + \text{Deemed Delivered Energy}) / (\text{Contract Capacity} \times (\text{Hours in TOD Period minus Seller Excuse Hours})).]$$

4.4 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy and Deemed Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy or Deemed Delivered Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	1.479	0.604	1.087
B. Oct –February	1.399	0.718	1.122
C. March – June	1.270	0.280	1.040

(b) Monthly TOD Payment. *[The following bracketed clause is applicable to As Available products only]* [(Except as provided in Section 4.5,)] For each month in each Contract Year, Buyer shall pay Seller for Delivered Energy and Deemed Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from (i) multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the sum of Delivered Energy (exclusive of Surplus Delivered Energy) for such TOD Period plus (ii) for each hour in the TOD Period, the Deemed Delivered Energy Price applicable to that hour times the TOD Factor for the applicable TOD Period, times the amount of Deemed Delivered Energy for such hour:

$$\text{Monthly TOD Payment} = \sum_{\text{hour}=1}^n ([\text{Contract Price } \$] \times \text{TOD Factor} \times \text{Delivered Energy MWh}_{\text{hour}}) + ([\text{Deemed Delivered Energy Price}_{\text{hour}} \$] \times \text{TOD Factor} \times \text{Deemed Delivered Energy MWh}_{\text{hour}})$$

For the avoidance of doubt, *[The following bracketed clause is applicable to As Available products only]* [Excess Energy shall be compensated as set forth in Section 4.5 and shall not be included in the determination of payment set forth above; and] “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive no compensation,

(c) Annual TOD Payment Adjustment. *[“Annual TOD Payment Adjustment” below applies to Baseload Products only.]* In any Contract Year, if the sum of the Monthly TOD Payments (“Annual TOD Payment”) exceeds the product of (i) Delivered Energy (exclusive of Surplus Delivered

Energy) and Deemed Delivered Energy in such Contract Year multiplied by (ii) one hundred and five percent (105%) of the Contract Price (“Annual Maximum TOD Payment”), Seller shall pay Buyer the Excess Payment Amount, as defined below within fifteen (15) days of receipt of Buyer’s invoice for such amounts; provided that if Seller fails to pay such amount Buyer may net the Excess Payment Amount from the next following payment that would be due from Buyer to Seller and all subsequent payments until Buyer has recouped the entire Excess Payment Amount.

If Annual TOD Payment > Annual Maximum TOD Payment, Seller refunds the amount resulting from subtracting the Annual TOD Payment from the Annual Maximum TOD Payment which amount shall be the “Excess Payment Amount.”

Where Annual TOD Payment = sum of Monthly TOD Payment for each month of the applicable Contract Year, and

Where Annual Maximum TOD Payment = ([Contract Price \$] × 1.05 × [Delivered Energy MWh_{hour} + Deemed Delivered Energy MWh_{hour}])

For the avoidance of doubt, “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy.

[Section 4.5 Excess Delivered Energy below applies to Full Buy-Sell transactions of As-Available Product only]

[4.5 Excess Delivered and Deemed Delivered Energy.

(a) ***Excess Energy Price.*** If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed “Excess Delivered Energy” and each MWh of additional Deemed Delivered Energy during such Contract Year shall be deemed “Excess Deemed Delivered Energy” (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, “Excess Energy”) and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the lesser of (I) or (II), where (I) is seventy-five percent (75%) of the Contract Price for such Contract Year times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Delivered Energy Price”); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the lesser of (I) and (II) where (I) is seventy-five percent (75%) of the Deemed Delivered Energy Price times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Deemed Delivered Energy Price”).

Excess Delivered Energy Price_{hour} = the lesser of ([75% × Contract Price × TOD Factor] OR DA Price_{hour})

Excess Deemed Delivered Energy Price_{hour} = the lesser of ([75% × Deemed Delivered Energy Price_{hour} × TOD Factor] OR DA Price_{hour})

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour (“Monthly Payment for Excess Energy”) the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

$$\text{Monthly Payment for Excess Energy} = \sum_{\text{hour}=1}^n (\text{Excess Delivered Energy Price}_{\text{hour}} \times \text{Excess Delivered Energy MWh}_{\text{hour}}) + (\text{Excess Deemed Delivered Energy Price}_{\text{hour}} \times \text{Excess Deemed Delivered Energy MWh}_{\text{hour}})]$$

4.6 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, as Scheduling Coordinator, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.6(a) and (c) and (ii) retain the credits and other payments received as a result of Energy from the Project delivered to the Integrated Forward Market or Real-Time Market, including revenues associated with CAISO dispatches. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for Imbalance Energy and costs and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4[(b)][(c)](iii), and the sum of Energy Deviations for each of the Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.6(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.7 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

[Section 4.7(c) below applies to Baseload Product only]

(c) Reliability Must-Run Contract and Capacity Procurement Mechanism Obligations. Seller with an existing RMR Contract will assign all of the proceeds of any RMR Contract affecting the Project to Buyer, except as provided below. Buyer shall retain all revenues from said RMR Contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch (“Retained Revenues”), as each is defined in the applicable RMR Contract, all of which shall be remitted to Seller. If the CAISO and/or Seller wish to negotiate or renegotiate an RMR Contract or contract related to the Capacity Procurement Mechanism (as defined in the CAISO Tariff) or similar capacity commitment under the CAISO Tariff that pertains to Unit(s) under this Agreement as of the Execution Date of this Agreement, Seller shall include Buyer in any such negotiations. If Seller enters into any new RMR Contract or contract related to the Capacity Procurement Mechanism or similar capacity commitment affecting the Project, Seller shall assign the revenues from such contract, except for Retained Revenues, Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch to Buyer.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall

not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) failure by Seller to meet the Guaranteed Commercial Operation Date, as extended by any Permitted Extensions due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date the permits necessary to construct or operate the Project, the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iii) failure by Seller for any reason other than those explicitly provided in Section 5.1(b)(ii) above and Section 11.1(a)(ii) to meet the Guaranteed Commercial Operation Date as may be extended by Permitted Extensions;

(iv) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;

(v) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

(vi) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1) year GEP Cure period Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all preceding Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the calculation of the cumulative GEP Shortfall for purposes of this subsection.

(vii) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline.

(viii) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

5.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) on which to (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term, including an Event of Default of Seller pursuant to Section 5.1(b)(ii)), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) (i) collect the Damage Payment in accordance with Section 5.8 below, if the Event of Default arose under Section 5.1(b)(ii), or (ii) collect the Termination Payment for any other Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement;

(e) suspend performance;

(f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;

(g) demand payment for damages due to Buyer’s unexcused failure to take delivery or pay for Product; and

(h) exercise any other rights or remedies available at Law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2(a)(ii), the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment. 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 determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate. 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.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates. The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) associated

with Seller's failure to achieve the Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and the amount of any Forecasting Penalties, as applicable on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. During the Test Period, and for twelve (12) months following the Test Period only, Buyer shall provide to Seller a statement of the CAISO Revenues and any true-ups of CAISO Revenues from prior months and Buyer shall forward to Seller the CAISO Revenues from such statement, according to the invoice and payment schedules described in this Section 6.1. Each Party will make payments by electronic funds transfer via ACH, to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (“INDEMNITIES”), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to Buyer, a copy of Buyers’s annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of Buyer’s first three fiscal quarters of each fiscal year, a copy of Buyers’s quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on Buyer’s website or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller’s or Seller’s guarantor’s, if applicable, annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall

not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

[For purposes of Sections 8.3 and 8.4, existing ERRs to replace Project Development Security with Pre-Delivery Term Security]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

(a) Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$60/kW for As-Available resources or \$90/kW for Baseload resources multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within five (5) Business Days following the Effective Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.4(a)(ii) in the amount of five percent (5%) of expected total Project revenues from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(ii).

The amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security, as applicable unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to Section 8.4(a)(ii), as applicable.

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, the interest on Project Development Security shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(ii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the unused portion of Project Development Security shall be transferred from Buyer to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet (Notices List). After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(e) Return of Performance Assurance. Buyer shall return the unused portion of Project Development Security or Delivery Term Security, as applicable, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to Section 4.6 ("CAISO Charges"), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Section 3.9(d), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

8.6 Guaranty. If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(v) by providing Notice thereof to Seller in accordance with Section 5.2.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. 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.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party’s exemption is lost or reduced, each Party’s responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer’s employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4[(b)][(c)] and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller;

(iii) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(iv) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(v) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(ix) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) **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.

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) The term “commercially reasonable efforts” as used in Section 10.2(b) of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it 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 and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

[The following clause (iii) applies to Existing Projects only:]

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet, except as provided pursuant to Section 11.1(a)(ii).

10.4 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Project, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix VII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix VII, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement (the “Confidential Information”) to a third party, other than as follows:

- (i) to the Party’s Affiliates, the Party’s or its Affiliates’ respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,
- (ii) for disclosure to Buyer’s Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,
- (iii) to the CPUC under seal for purposes of review,
- (iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;
- (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in subsection (vi);
- (vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC;
- (vii) to the extent necessary for Buyer to exercise its exclusive rights to the Product during the Delivery Term, including its rights to resell any or all portions of the Product as set forth in Section 3.1(a), other than the Contract Price.

(b) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Effective Date.

10.8 RPS Confidentiality. Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, the number of bids per company, Project size, resource type, Delivery Term, Project location, Capacity Factor and Contract Capacity, Commercial Operation Date, Expected Initial Energy Delivery Date, Contract Quantity, Delivery Point, and the achievement of Project development Milestones.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

(B) be endorsed (blanket or otherwise) to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto".

(ii) The limit shall not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include Start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(e) Additional Insurance Requirements.

(i) Before commencing performance of the Work, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer.

(iii) Buyer uses a third party vendor, EXIGIS,LLC to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to:

Certificate Holder:
Pacific Gas & Electric Company
c/o EXIGIS, LLC
support@exigis.com
Fax: 646-755-3327

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

10.11 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.12 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.

10.13 General. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. The Parties acknowledge and agree that this Agreement is a “forward contract” (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.14 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.15 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States 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).

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event.

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of any of the following: (each constituting a “Force Majeure Failure”):

(i) If prior to the Delivery Term, Seller is unable, due solely to a Force Majeure event, to achieve the Commercial Operation Date or place the Project into Commercial Operation by the Guaranteed Commercial Operation Date, after applicable extensions or cure periods have run, as set forth in Section 3.9(c); provided that if a Force Majeure event is caused by a catastrophic natural disaster, then upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller shall provide Buyer a copy of the engineer’s report, at no cost to Buyer; provided further that if such engineer’s report concludes that the Project is capable of being repaired or replaced within twenty-four (24) months from the date of the Seller provides the engineer’s report to Buyer and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the repair or replacement period deemed necessary by the engineer’s report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and Seller has resumed and is satisfying its obligations under this Agreement.

(ii) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer’s report, at no cost to Buyer; provided further that if such engineer’s report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer’s report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.6(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting, to be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration Initiation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then the Parties shall resolve such controversy through Arbitration. The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within one hundred and twenty (120) days of service of the Referral Date.

12.4 Arbitration Process. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and Confidential Information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator’s award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys’ fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VI, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, website, or contact, including such information in Appendix VI and the “Notices List” in the Cover Sheet, to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

[SELLER, a (*include place of formation and business type*)]

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

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 **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, 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 for a period of one 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 as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents 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 within thirty (30) days after the resumption of our business and 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: _____

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

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Buyer has accepted delivery of the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III
FORM OF PROGRESS REPORT

Progress Report

of

("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between _____, (“Seller”) and Pacific Gas and Electric Company dated _____, (the “Agreement”).

Seller shall review the status of each Milestone of the construction schedule for the Project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to [REDACTED], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [REDACTED].

1. Executive Summary

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (e.g., *in Milestone section “January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012” and in Construction section “January 2012 - Notice to Proceed was issued to EPC contractor on January 10, 2012”*):

- 1.1 Milestones**
- 1.2 Governmental Approvals**
- 1.3 Financing**
- 1.4 Property Acquisition**
- 1.5 Design and Engineering**
- 1.6 Major Equipment procurement**
- 1.7 Construction**
- 1.8 Interconnection**
- 1.9 Startup**

2. Milestones

In this section, please include information on each Milestone listed in the Cover Sheet, plus any additional significant milestones related to the project.

2.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller’s Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

3. Governmental Approvals

In this section, please include information on each of the Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the Governmental Approval(s) to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other Governmental Approvals to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

Please attach a copy of the Progress Reports received during the previous calendar month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Project construction information in Section 8), Network Upgrades, and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that any and all information contained in this Seller's Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

CONSTRUCTION START AND COMMERCIAL OPERATION CERTIFICATION FORMS AND PROCEDURES

Appendix IV-1: CONSTRUCTION START FORM OF CERTIFICATION

Appendix IV-2: COMMERCIAL OPERATION CERTIFICATION PROCEDURE

Attachment A Commercial Operation Form of Certification

Appendix IV-3: CAPACITY TEST PROCEDURE [*Use for Baseload Product only*]

[Use this Appendix IV—1 for BOTH As-Available and Baseload Products]

APPENDIX IV-1

**CONSTRUCTION START
FORM OF CERTIFICATION**

____ (Date) ____

Director Contract Management and Settlements
Pacific Gas and Electric Company
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Re: Construction Start Date

This certification (“Certification”) of the Construction Start Date is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer all of the following:

- a) the EPC Contract related to the Project was executed on _____;
- b) [permitting agency name] _ issued grading permits to the Seller on _____; and
- c) the Notice to Proceed was issued on _____ (attached), and,
- d) mobilization at the Project Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ___ day of _____.

(Seller)

(Name)

(Position)

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV-2

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 20__ by and between Pacific Gas and Electric Company (“Buyer”) and _____ (“Seller”) to declare and recognize the Commercial Operation Date of the Project, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

- (1) A certification from an authorized officer of Seller, substantially in the form of Attachment A to this Appendix IV-2, dated as of the Commercial Operation Date; and
- (2) A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Project has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Project has successfully completed Project Testing and the dates on which Seller has accepted the test results; and
 - (c) A statement that the Project has achieved Substantial Completion and the date on which it was achieved.
- (3) Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 3.4 and 3.6 and has enabled Buyer to schedule the Facility with the CAISO for the Facility’s full unrestricted output.
- (4) Definitions.
 - (a) “Mechanical Completion” means that (i) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Project is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) “Project Testing Completion” means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as “Project Testing”) as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Project has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.
 - (c) “Substantial Completion” means when the following has occurred: (i) the Project is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Project in the use for which it is intended; (ii) the Project has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

APPENDIX IV-2 –Attachment A

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Mechanical Completion of the Project was achieved on _____ [DATE]_____.
- (2) Project Testing Completion successfully occurred on:

[Seller to indicate each type of Project Testing and date completed]

- (a) NAME OF TEST [DATE]
- (b) NAME OF TEST [DATE]
- (c) NAME OF TEST [DATE]

- (3) Substantial Completion of the Project was achieved on _____ [DATE]_____
- (4) Pre-parallel inspection of the Project was successfully completed on _____ [DATE]_____
- (5) Authorization to parallel the Project was obtained on _____ [DATE]_____
- (6) Telemetrying / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Project on _____ [DATE]_____
- (7) Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Project on _____ [DATE]_____
- (8) Power system stabilizer testing and calibration was obtained for the Project on _____ [DATE]_____ or, was not required
- (9) Full Capacity Deliverability Status Finding from CAISO was obtained for the Project on _____ [DATE]_____ or, was not required because the Project is Energy Only.
- (10) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.
- (11) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____ [DATE]_____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
License Number and LPE Stamp _____	_____

[Use for Baseload Product only]

APPENDIX IV-3

CAPACITY TEST PROCEDURE

[To be developed by Buyer and Seller by using CAISO test procedures for the applicable technology]

APPENDIX V

GEP DAMAGES CALCULATION

In accordance with the provisions in Section 3.1(e)(ii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A-B) \times (C-D)]$$

Where:

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

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff), in which the PNode resides, plus (b) \$50/MWh

D = the unweighted Contract Price specified in the Cover Sheet for the Performance Measurement Period, in \$/MWh

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” is less than \$20/MWh, the “(C-D)” will be replaced with \$20/MWh.

APPENDIX VI

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk to advise of the intent to parallel before any Start-up.
- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participant Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's approved web-based system, which is located at www.pge.com under "Business to Business," or alternative website designated by PG&E (both, "PG&E's Website"). Once directed to the appropriate page, enter the username and password assigned by PG&E's Bilateral Settlements Group. If PG&E's Website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity,")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and Bilat_Settlements@pge.com.
 - c. For Monthly and Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Schedules into the Day-Ahead Market, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.
 - e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.

- f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to MerchantOutages@pge.com, DAenergy@pge.com, ESMSOutageCoordinator@pge.com, and Bilat_Settlements@pge.com.
 - i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**
 - ii. **Email body:**
 - 1. **Type of Outage: Planned Outage or Prolonged Outage**
 - 2. **Start Date and Start Time**
 - 3. **Estimated or Actual End Date and End Time for Outage**
 - 4. **Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted**
 - 5. **Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage.**
 - 6. **Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.**

C. FORCED OUTAGE REPORTING

- 1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally at (415) 973-4500 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E’s Website, as defined above.
 - c. If PG&E’s Website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.
 - i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**
 - ii. **Email body:**
 - 1. **Type of Outage: Forced Outage**
 - 2. **Start Date and Start Time**
 - 3. **Estimated or Actual End Date and End Time**

4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted.*
5. *Text description of additional information as needed.*
6. *Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.*
7. *Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.*
8. *Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.*
9. *Associated events, e.g. operation of Special Protection Schemes.*
10. *Impact on CAISO-controlled Grid.*

APPENDIX VII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2___ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Loan Agreement and/or Security Agreement of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider 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, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to PG&E a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no

rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

“Permitted Transferee” means any person or entity who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E 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 PG&E 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 PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an “Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E’s ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E’s right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be

allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller 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 or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____], as depositary agent, to ABA No. [_____], Account No. [_____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depositary agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

If to PG&E:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the loan agreement and/or security agreement.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) 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.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

PACIFIC GAS AND ELECTRIC COMPANY (PG&E)

By: _____
Name: _____
Title: _____

[_____] (Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] [name of Seller]

By: _____
Name: _____
Title: _____

APPENDIX VIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, “Charter Documents”) as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller’s incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Execution Date, to the effect that, to the best of such officer’s knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
7. An executed Letter of Concurrence substantially in the form specified in Appendix XI.

[Appendix IX applies to As-Available Product only]

APPENDIX IX

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix IX.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix IX.

APPENDIX IX

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

Settlement Interval No.	Date	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
1	mm/dd/yyyy																								
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4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal _____

APPENDIX X

TELEMETRY PARAMETERS FOR WIND OR SOLAR FACILITY

Technology Type	Telemetry Parameters	Units	
Solar Photovoltaic	Back Panel Temperature	°C	
	Global Horizontal Irradiance	W/m ²	
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m ²	
	Wind Speed	m/s	
	Peak Wind Speed (Within 1 minute)	m/s	
	Wind Direction	Degrees	
	Ambient Air Temperature	°C	
	Dewpoint Air Temperature or Relative Humidity	°C	
	Horizontal Visibility	m	
	Precipitation (Rain Rate)	mm/hr	
	Precipitation (Running 30 day total)	mm	
	Barometric Pressure	Millibars or Hecto Pascals (HPa)	
	Solar Thermal or Solar Trough	Global Horizontal Irradiance	W/m ²
		Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m ²
Wind Speed		m/s	
Peak Wind Speed (Within 1 minute)		m/s	
Wind Direction		Degrees	
Ambient Air Temperature		°C	
Dewpoint Air Temperature or Relative Humidity		°C	
Horizontal Visibility		m	
Precipitation (Rain Rate)		mm/hr	
Precipitation (Running 30 day total)		mm	
Barometric Pressure		Millibars or Hecto Pascals (HPa)	
Individual Tracking Assembly Angle Set Points (Solar Trackers Only)		Degrees	
Actual Tracking Assembly Angles (Solar Trackers Only)		Degrees	
Wind	Wind Speed (measured at hub height)	m/s	
	Peak Wind Speed (Within 1 minute, measured at hub height)	m/s	
	Wind Direction	Degrees	
	Wind Speed Standard Deviation	--	
	Wind Direction Standard Deviation	--	
	Barometric Pressure (measured at hub height)	Millibars or Hecto Pascals (HPa)	
	Ambient Temperature (measured at hub height)	°C	

APPENDIX XI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company (“PG&E”) and [Company Name] with respect to [Facility Name (the “Facility”)] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

PG&E and [Company Name] have executed a [power purchase and sale agreement (the “Agreement”)] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

[Position]

Pacific Gas and Electric Company

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

APPENDIX XII

SUPPLIER DIVERSITY PROGRAM

1. Seller shall provide Women-, Minority-, and service Disabled Veteran-, and Lesbian, Gay, Bisexual and/or Transgender-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 (“WMDVLBE”), the maximum practicable opportunity to participate in the performance of work supporting Seller’s construction, operation, and maintenance of the Project. General Order 156 can be found on <http://www.cpuc.ca.gov/puc/documents/go.htm> .
2. Upon request from Buyer, Seller shall provide a separate “Supplier Plan” consisting of a specific list of suppliers that may participate in the performance of the work supporting the construction of the Project prior to the Commercial Operation Date and operation and maintenance of the Project after the Initial Energy Delivery Date, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVLBE suppliers supporting the construction, operation and maintenance of the Project.
3. Upon request from Buyer, but no less than once per 365 day period of time between the Execution Date and the end of the Delivery Term, Seller shall report its spending with WMDVLBE suppliers per instructions to be provided by PG&E.
4. Targets.
 - a) Seller’s supplier diversity spending target for Work supporting the construction of the Project prior to the Commercial Operation Date is ____ percent (____%) as measured relative to Seller’s total expenditures on construction of the Project prior to the Commercial Operation Date, and;
 - b) Seller’s annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is ____percent (____%) as measured relative to the net payments made by Buyer to Seller in each Contract Year.
5. Seller shall use good faith efforts in meeting the requirements of this Appendix XII which efforts shall be material obligations.

[Bracketed language applicable to WMDVLBE Sellers only]

6. Seller is a WMDVLBE, as certified by _____ [please identify the certifying agency].

**APPENDIX XIII
PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION**

I. PROJECT SPECIFICATIONS

“MVA” means megavolt ampere, the unit of apparent power.

“Nameplate Rated Output” means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

“Designated Power Factor” means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project’s reactive power requirements that are specified in *[please identify the applicable source, such as the PTO’s Interconnection Handbook, the CAISO’s Phase II Study, or the Generator Interconnection Agreement for the Project]* and are not being satisfied by other sources of reactive power within the Project.

“Nameplate Rated Power” means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following eleven (11) items (each item of which shall be a “Project Specification”). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer’s prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
9. Description of Units: *[delete inapplicable project types]*

• **For a Solar PV Project**

- a. For each type of inverter in the Project, specify in the table below the type, the number of inverters, the Nameplate Rated Output, the total Nameplate Rated Output, the Designated Power Factor, the Nameplate Rated Power and the total Nameplate Rated Power: *[add rows as needed]*

Inverter Type	Number of Inverters	Nameplate Rated Output (MVA)		Designated Power Factor	Nameplate Rated Power (MW)	
		Per Inverter	Total		Per Inverter	Total
Total		N/A			N/A	

- b. For each type of panel technology (e.g., multi-crystalline silicon, mono-crystalline silicon, thin-film CdTe, multi-junction, bifacial, concentrating, etc.) and each type of panel orientation (e.g., fixed-mount, tilt-angle, azimuth, single-axis tracker, double axis tracker, etc.) specify in the table below the technology, the type of orientation and the total DC rating at Standard Test Conditions: *[add rows as needed]*

Panel Technology	Orientation	DC Rating at STC (MW _{DC})
Total	N/A	

“Standard Test Conditions” means, with respect to determining the nameplate DC rating of a solar PV panel in a factory flash test, an irradiance of 1,000 W/m², a panel temperature of 25°C, and an air mass of 1.5.

- **For a Solar Thermal Project**

- Specify the total area (square meters) of solar mirrors (or of apertures for parabolic mirrors):
- Specify the technology (e.g., parabolic trough, power tower, parabolic disk) and the storage medium and capacity, etc.:
- For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):
- For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

- **For a Wind Project**

For each type of turbine, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power and the rated output wind speed (m/s):

- **For a Biomass or Geothermal Steam Project**

- For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):
- For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:

10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix XIII: [Insert Map]

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Appendix XIII:

[Insert One-Line Diagram for Interconnection Facilities and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to Delivery Point (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point ($F = A - B - C - D - E$), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

inverter/generator terminals; Point of Interconnection; Other: _____

APPENDIX XIV

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

Where the:

- A. RA Value shall be \$4,010/MW/Month in calendar year 2016 and shall escalate at 2.5% per year for each succeeding calendar year; and
- B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or
- C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the minimum of (a) the Expected Net Qualifying Capacity values as calculated in Section B above; or, (b) the product of the Contract Capacity and the Partial Capacity Deliverability Status Amount.

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Biomass	Geothermal	Solar	Wind
Jan	70.61%	84.92%	0.79%	4.43%
Feb	72.50%	85.34%	6.62%	8.25%
March	70.79%	82.42%	15.12%	21.36%
April	62.13%	80.44%	60.43%	23.90%
May	65.57%	81.99%	64.13%	31.04%
June	73.55%	78.59%	80.03%	27.31%
July	76.32%	78.74%	80.39%	17.04%
Aug	75.31%	78.37%	74.86%	15.31%
Sept	74.67%	78.78%	73.05%	9.20%
Oct	71.80%	79.05%	48.29%	7.22%
Nov	70.86%	81.08%	2.49%	4.43%
Dec	74.25%	83.15%	1.33%	4.50%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2019
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2019
- FCDS is achieved on August 14, 2019

RA Value (\$/MW/Month) = \$4,010.00, escalated at 2.5% per year for 3 years, from 2016 to 2019

$$\$4,010 \times (1.025)^3 = \$4,318/\text{MW}/\text{Month}.$$

Monthly Qualifying Capacity factor for a solar project in June is 86.74% (from table above).

Expected Net Qualifying Capacity =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 86.74\% = 17.35 \text{ MW}$$

RA Deficiency Amount (\$/Month) =

$$\text{RA Value ($/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)} =$$

$$\$4,318/\text{MW}/\text{Month} \times 17.35 \text{ MW} = \$74,917.30$$

In this example, the RA Shortfall Period is from January through October 2019. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

Confidential Appendix E

Independent Evaluator Report

(Redacted version included with public filing)

Pacific Gas and Electric Company
Solar Photovoltaic Program – Power Purchase
Agreements (PV Program PPA)
2016 Request for Offers

Independent Evaluator
Bid Evaluation and Selection Process
Final Report

September, 2017

Prepared by
Merrimack Energy Group, Inc.



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Appendix A: List of Offers Received

I. Introduction

A. Overview

Pacific Gas and Electric Company (“PG&E”) is seeking approval of 3 power purchase agreements (“PPAs”) for the purchase of 60 MW of installed capacity from solar photovoltaic projects under PG&E’s 2016 Solar Photovoltaic (“PV”) Solicitation Request for Offers.

On December 7, 2016, PG&E issued its 2016 Solar PV Solicitation Request for Offers (“2016 PV RFO”; “RFO”; or “Solicitation”).¹ PG&E solicited offers from developers of eligible solar photovoltaic generating facilities to supply the requested product. As stated in the RFO, the product requested via the RFO means the electricity generated by a Project (the eligible renewable energy resource described in an Offer), together with all capacity and ancillary products, services or attributes which can be produced by or associated with the Project, and any other attributes required by the California Public Utilities Commission (“CPUC” or “Commission”) and/or the California Energy Commission (“CEC”), to count the electricity toward PG&E’s Renewable Portfolio Standard (“RPS”) requirements.

PG&E is seeking Offers for the sale of Product from solar PV facilities that are over 3 and up to 20 MW (AC) in size for a contract term of 10, 15, or 20 years.² The generating facility must be commercially operable within 36 months following final and non-appealable CPUC approval of an executed Solar PV Program PPA associated with the project.

PG&E’s goal with regard to the 2016 PV Program PPA RFO is to procure 68.75 MW of new or existing PV projects. However, if less than 68.75 MW of Offers are selected, then the remaining MW will be added to the 2017 PV solicitation.

Pursuant to regulatory requirements of the CPUC, PG&E retained Merrimack Energy Group, Inc. (“Merrimack Energy”) as the Independent Evaluator (“IE”) for the PPA portion of the Solar PV program procurement process.

This IE report is submitted in conformance to the requirements of the CPUC and is designed to be consistent with the requirements outlined in the CPUC’s IE Report Template, subject to adjustments in requirements to reflect the unique nature of this solicitation.

B. Program Background

On February 2, 2009, PG&E filed an application with the CPUC seeking approval of its Solar Photovoltaic Program (“Solar PV Program”) and authorization to recover the associated revenue requirements for the Solar PV Program in rates. PG&E’s proposed

¹ PG&E issued an updated Protocol for the PV RFO on December 21st, 2016.

² PG&E noted in the RFO Protocol that it has a preference for Offers with terms of less than 20 years.

Solar PV Program consists of the installation and operation of up to 500 MW of 1 to 20 MW PV generation facilities in PG&E's service territory over a five-year period. Up to 250 MW of the Solar PV Program capacity will be utility-owned generation ("UOG"). PG&E will also procure up to 250 MW through PPAs with independent power producers (IPPs).

In its application, PG&E requested that the PPA portion of the proposed Solar PV Program include an annual solicitation for projects 1 to 20 MWs. Decision 12-05-035, filed on May 24, 2012, increased the minimum eligible project size for future solicitations to 3 MW. PG&E anticipated selecting projects based on viability and energy delivery criteria.

PG&E emphasized in its application that the Solar PV Program was designed to expedite and simplify the regulatory approval process and to facilitate annual, systematic development of PV resources. PG&E requested that the Commission adopt a standard contract form, including a non-negotiable standard price for these projects. According to the application, the price for the PPAs would be based on PG&E's estimated levelized cost of energy (LCOE) for the UOG portion of the PV Program. PG&E requested that it be allowed to update both the PPA forms and the price through an advice letter filing.

On February 26, 2014, PG&E filed a Petition for Modification (PFM) to reassign capacity from the PV Program to the Renewable Action Mechanism (RAM) program. The CPUC Decision ("D.") 14-11-042 granted the PFM with certain restrictions. PG&E was allowed to roll half of the remaining PV Program capacity into RAM 6, with the remaining half procured equally into two solicitations to be held in 2016 and 2017. This set the 2016 PV RFO procurement target at 68.75MW.

C. Regulatory Decisions

As noted above, on February 2, 2009, PG&E filed Application (A.) 09-02-019 seeking authorization for a five-year, 500 MW solar photovoltaic (PV) program. On April 22, 2010, the Commission adopted Decision (D.) 10-04-052 authorizing PG&E to own and operate 250 MW of primarily ground-mounted solar PV facilities in the 1 to 20 MW range and to enter into long-term power purchase agreements (PPA) for 250 MW of similarly configured facilities. As noted in the previous section, the minimum facility size was increased to 3 MW as authorized in D.12-05-035.

D.10-04-052 authorized PG&E to expend up to \$1.454 billion for the capital costs associated with the UOG portion of PG&E's Solar PV program based on an average capital cost of \$4,312 per kilowatt (AC) inclusive of a 10% contingency amount. D.10-04-052 also authorized PG&E to hold solicitations for 20-year PPAs with solar PV developers, which will result in PG&E ratepayer costs that were considered, but not explicitly stated in the decision. The maximum estimated cost of the PPA program is \$2.85 billion, assuming that the program is fully subscribed at the maximum allowable price and assuming a 24% system capacity factor and an annual degradation factor of .89%.

Pursuant to D. 10-04-052, PG&E filed advice letter (AL) 3674-E on May 24, 2010. In AL 3674-E, which concerns the PPA portion of the program, PG&E sought approval of: (1) a PPA solicitation process, including protocols and eligibility criteria; (2) a generation system interconnection application process and protocols; (3) a process for identifying preferred locations for PPA projects that optimize the locational value of project sites; and (4) a standard contract for projects between one to less than three MW in size and a standard contract for projects from three MW to 20 MW.

Resolution E-4368, issued on December 16, 2010, approved (with modifications) and implemented PG&E's Solar Photovoltaic Program. The Resolution adopts: (1) a competitive solicitation process, program protocols and eligibility criteria; (2) standard power purchase agreements; and (3) annual compliance reporting requirements. Resolution E-4368 also describes the background to the regulatory decisions and Advice Letter filings leading up to program implementation.

On February 2, 2011, PG&E launched the initial Solar PV PPA RFO, and sought PPAs for a total of up to 50 MW from new solar PV facilities ranging in size from 1 to 20 MW. After evaluating the proposals, PG&E selected three solar PV projects with a total of 50 MW. The Commission approved the PPAs on August 22, 2011.

PG&E launched the 2012 Solar PV solicitation (second Solar PV PPA RFO) for Program Year 2 in April 2012, seeking PPAs for 50 MW from new PV facilities. PG&E executed two PPAs using the Large Project PPA for 20 MW each and four PPAs of 2 MW each from the same counterparty under the Small PV Project PPA. The Commission approved each of these executed PPAs on October 16, 2012.

On December 10, 2012, PG&E filed Advice Letters 4160-E and 4161-E requesting termination of the PV Program and procurement of the remaining approved capacity associated with the PV Program through the Renewable Auction Mechanism ("RAM") process. On February 7, 2014, the Commission rejected, on procedural grounds and without prejudice, Advice Letters 4160-E and 4161-E. On February 7, 2014, PG&E filed a Petition for Modification requesting in part that the PV Program and RAM Decisions be modified to terminate the PV Program after the Third Program Year, and that the third PV PPA Program solicitation occur concurrently with the fifth RAM solicitation.

On February 28, 2014 PG&E filed Advice Letter 4368-E, requesting modifications to the PV Program Solicitation Protocol and Power Purchase Agreements. PG&E proposed the following changes to the PV Program RFO:

- Include only one PPA for both small and large PV projects based on the RAM 5 PPA;
- PG&E seeks to include language that facilitates the economic dispatch of the PV Program Year 3 PPAs by allowing for an unrestricted number of hours of curtailment;

- Allow bidders the option of submitting offers as Energy Only or Full Capacity Deliverability (FCDS) status;
- PG&E seeks to extend the Guaranteed Commercial Online Date for all projects from 18 months to 24 months after Commission approval;
- PG&E seeks to increase the time period for an extension to the Guaranteed Commercial Online Date for certain allowed regulatory and permitted delays to 18 months from 6 months for the existing Small PV PPA and 12 months for existing Large PV PPA;
- PG&E seeks to modify the interconnection eligibility requirements from previously requiring a submitted interconnection application to now requiring a completed Phase II interconnection study in order to participate in the PV PPA Program Year 3 RFO;
- PG&E proposes to adopt the bid evaluation and ranking process proposed for use in the RAM 5 RFO for purposes of the PV PPA Program Year 3 RFO.

The Commission issued Resolution E-4659 in October 2014 which addressed PG&E requests for program changes noted above. The Commission rejected PG&E's proposal for unrestricted curtailment and required that PG&E adopt language that aligns with the 2013 RPS form PPA. The Commission also found that PG&E did not provide sufficient evidence to justify extending the time period for extensions due to regulatory delay. The Commission modified the PV Program PPA's regulatory delay extension to six months for all projects. The Commission also denied PG&E's request to require that projects have completed Phase II interconnection studies to compete in the program. The Commission allowed a minimum of a Phase I interconnection study. The Commission found that PG&E's other requests were reasonable.

On February 26, 2014, PG&E filed a Petition for Modification (PFM) to reassign capacity from the PV Program to the Renewable Action Mechanism (RAM) program. The CPUC Decision ("D.") 14-11-042 granted the PFM with certain restrictions. PG&E was allowed to roll half of the remaining PV Program capacity into RAM 6, with the remaining half procured equally into two solicitations to be held in 2016 and 2017. This set the 2016 PV RFO procurement target at 68.75MW.

D. Procurement Protocol – 2016 Solar PV Program PPA RFO

On December 7, 2016 PG&E launched the 2016 Solar PV Program PPA RFO (fourth solicitation under this Program) and posted the 2016 RFO Protocol document on its website. PG&E subsequently updated the 2016 PV Solicitation Request for Offers Protocol on December 21, 2016. In the RFO document (i.e. "2016 PV RFO"), PG&E listed a number of requirements and preferences to inform prospective Participants of the requirements for competing in the procurement process. These included:

- Existing and new generation facilities are eligible. An existing generating facility must be certified as an eligible renewable resource (“ERR”). If an existing facility, the current contract must expire by July 2020;
- The nameplate capacity of the generating facility must be greater than 3 MW and no greater than 20 MW in size;
- Participants may offer projects with Full Capacity Deliverability Status (“FCDS”), Partial Capacity Deliverability Status (“PCDS”), and Energy-Only (“EO”) status. Projects bidding as Energy-Only do not have to pursue any deliverability studies;
- Participants may offer different size options for their project to enhance their opportunity for resource selection;
- The contract delivery term is 5, 10, or 20 years. PG&E indicated a preference in the RFO for offers with terms of less than 20 years;
- The project must interconnect within the electric distribution and transmission system of PG&E, SCE, or SDG&E;
- The generating facility must be commercially operable within 36 months following CPUC approval of an executed PV Program PPA;
- Participants must submit with their offer their best and final price. Participants will not be given another opportunity to update their pricing;
- The price submitted must be a single value in \$/MWh which will remain constant or escalated annually by a fixed escalator for the term of the agreement;
- Product quantities can vary annually to reflect degradation of the facility;
- Participants must have an executed Interconnection Agreement, a completed Phase II interconnection study (or equivalent), or documentation showing that the project passed the Distribution Provider or CAISO Fast Track screens at the time of Offer submittal;
- PG&E is only accepting as-available peaking product from a solar PV project;
- Participants must attest to site control when their Offers are submitted to PG&E. Evidence of site control and attestation to site control for the entire delivery term of the PPA must be demonstrated by the participant;
- A minimum level of developer experience is required for participation. Specifically, the Seller and/or member of Seller’s project development team must

have either completed or begun construction of at least one solar project of similar technology and capacity³;

- The participant must show that the project employs technology currently in use at a minimum of two operating facilities of similar capacity worldwide;
- Offers submitted to this program may not participate in the California Solar Initiative or Net Energy Metering programs⁴;
- The PPA requires a Participant to post a Project Development Security of \$60 per kW for As-Available facilities due within five business days following CPUC approval of the PPA. The development deposit will be refunded upon COD or applied to the subsequent Performance Deposit;
- The PPA requires a Participant to post a Delivery Term Security, which is an amount equal to 5% of expected total Project revenues. This amount is equal to 6 months of revenue for a 10-year PPA, 9 months of revenue for a 15-year PPA, or 12 months of revenue for a 20-year PPA, due on the COD;
- PG&E is not limiting the number of Offers submitted by a single Participant. However, to ensure that the market for Products sought in this RFO remains competitive, PG&E may cap the amount awarded in this RFO at 20 MW to any single participant and consider bidder concentration to work towards a diversified mix of selected developers.

In addition to the above information, Participants are required to submit a completed Offer Form and Developer Experience Form (Appendix A), which contains several tabs including the following:

- Instructions
- Validation
- Developer Experience
- Energy Pricing
- Gen Profile
- Supply Chain Responsibility
- Product Description

³ Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

⁴ For Net Energy Metering (“NEM”) this would be a project less than or equal to 1 MW and for California Solar Initiative (“CSI”) this would be a project less than or equal to 5 MW.

The Product Description tab requests information about the offer, including the project name and location, electric and interconnection, photovoltaic technology, and commercial operation date, capacity and product type.

Bidders were also required to provide the following information:

- A complete PPA Cover Sheet (Appendix B to the Solicitation);
- A completed PPA Appendix XIII of the PPA;
- Site Control Questionnaire and Attestation (Appendix C);
- Acknowledgement and Commitment of Site Owner Letter (Appendix D to the Solicitation);
- Interconnection Studies.

In addition, the RFO document provides a reference to PG&E's PV program website. The website includes an interactive Google-based map⁵ of PG&E's service territory as a tool to help renewable energy developers identify potential project sites; however, there is also a disclaimer that it is not a guarantee that generators can interconnect at any particular time and place. In addition, the website includes the 2016 RFO schedule; the questions and answers received from participants; information on the Participant's Webinar including presentation materials, audio file and attendees list; RFO Protocol documents and Appendices; Power Advocate instructions and registration information; Wholesale Generator Interconnection information, Frequently Asked Questions; and Contact Information. The website also includes links to detailed information on interconnection requirements and references to tariffs and other documents.

The schedule identified for the process includes an approximate nine-month process from issuance of the RFO to submission of signed PPAs.

E. Issues Addressed in This Report

This report addresses Merrimack Energy's assessment and conclusions regarding the following seven issues identified in the CPUC's IE Report Template:

1. Describe the role of the IE.
2. Evaluate the fairness of the investor-owned utility's ("IOU's") bidding and selection process (i.e. quantitative and qualitative methodology used to evaluate and select offers, consistency of evaluation and selection methods with criteria specified in bid documents, etc.).
3. How did the IOU conduct outreach to bidders? Was the solicitation robust?

⁵ The map provides the location of selected electric transmission lines, distribution lines and associated substations within the PG&E service area. In addition, the map also provides specific information, such as operating voltages, line capacity and substation names.

4. Describe the IOU's Least Cost Best Fit ("LCBF") methodology (or provide the IOU's own description). Evaluate the strengths and weaknesses of the IOU's LCBF methodology.
5. Describe project specific negotiations. Highlight any areas of concern including unique terms and conditions.
6. If applicable, describe safeguards and methodologies employed by the IOU to compare affiliate bids or utility-owned generation ownership offers.
7. Do you agree with the IOU that the contract(s) merit CPUC approval? Explain.

All of these matters are addressed in this report.

II. Description of the Role of the IE

A. Regulatory Requirements For the IE

The requirements for participation by an IE in RPS solicitations are outlined in Decisions ("D").04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28), D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8) of the CPUC, D.09-06-050 and D.10-07-042.

The role of the IEs in California IOU procurement processes has evolved over time. In D.04-12-048 (December 16, 2004), the CPUC required the use of an IE by investor-owned utilities (IOUs) in resource solicitations where there is an affiliated bidder or bidders, or where the utility proposed to build a project or where a bidder proposed to sell a project or build a project under a turnkey contract that would ultimately be owned by a utility. The CPUC generally endorsed the guidelines issued by the Federal Energy Regulatory Commission ("FERC") for independent evaluation where an affiliate of the purchaser is a bidder in a competitive solicitation, but stated that the role of the IE would not be to make binding decisions on behalf of the utilities or administer the entire process.⁶ Instead, the IE would be consulted by the IOU, along with the Procurement Review Group ("PRG") on the design, administration, and evaluation aspects of the Request for Proposals ("RFP"). The Decision identifies the technical expertise and experience of the IE with regard to industry contracts, quantitative evaluation methodologies, power market derivatives, and other aspects of power project development. From a process standpoint, the IOU could contract directly with the IE, in consultation with its PRG, but the IE would coordinate with the Energy Division.

⁶ Decision 04-12-048 at 129-37. The FERC guidelines are set forth in Ameren Energy Generating Company, 108 FERC ¶ 61,081 (June 29, 2004).

In D.06-05-039 (May 25, 2006), the CPUC required each IOU to employ an IE regarding all RFPs issued pursuant to the RPS, regardless of whether there are any utility-owned or affiliate-owned projects under consideration. In addition, the CPUC directed the IE for each RFP to provide separate reports (a preliminary report with the shortlist and final reports with IOU advice letters to approve contracts) on the entire bid, solicitation, evaluation and selection process, with the reports submitted to the utility, PRG, and CPUC and made available to the public (subject to confidential treatment of protected information). The IE would also make periodic presentations regarding its findings to the utility and the utility's PRG consistent with preserving the independence of the IE by ensuring free and unfettered communication between the IE and the CPUC's Energy Division, and an open, fair, and transparent process that the PRG could confirm.

In 2007, the use of an IE was required for any competitive solicitation seeking products for a term of more than three months in D.07-12-052 (December 21, 2007). Also, the process for retaining IEs was modified substantially, with IOUs developing a pool of qualified IEs subject to feedback and any recommendations from the IOUs PRG and the Energy Division, an internal review process for IE candidates, and final approval of IEs by the Energy Division.

In 2008, in D.08-11-008, the CPUC changed the minimum term requirements from three months to two years, and reiterated that an IE must be utilized whenever an affiliate or utility bidder participates in the RFO, regardless of contract duration.

In D.09-06-050 issued on June 18, 2009 in Rulemaking 08-08-009, Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program,⁷ the CPUC required that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility's PRG and its IE, including a report filed by the IE.

In Decision 10-04-052, Decision Adopting a Solar Photovoltaic Program for Pacific Gas and Electric Company, April 22, 2010, the Commission required PG&E to enlist the services of an independent evaluator to oversee the solicitation process and provide an assessment of the fairness and robustness of each of the solicitations it conducts pursuant to this program, for both utility-owned generation projects and power purchase agreement projects, and the degree to which these solicitations conform to the solicitation protocols.

In D.10-07-042 issued on July 29, 2010, the Commission reaffirmed the role of the IE and required the Energy Division to revise the IE Template to ensure that the IEs focus on their core responsibility of evaluating whether an IOU conducted a well-designed, fair, and transparent RFO for the purposes of obtaining the lowest market prices for ratepayers, taking into account many factors (e.g. project viability, transmission access, etc.).

⁷ Decision Establishing Price Benchmarks and Contract Review Processes for Short-Term and Bilateral Procurement Contracts for Compliance With the California Renewable Portfolio Standard.

This report is submitted in conformance with the above requirements and is generally consistent with the requirements outlined in the CPUC's Report Template.

B. Description of Key IE Roles

In compliance with D.10-04-052 issued April 22, 2010, PG&E selected Merrimack Energy to serve as IE for the Solar Photovoltaic Program Request for Offers in April, 2010. The objective of the role of the IE is to ensure that the solicitation process is undertaken in a fair, consistent, unbiased, and objective manner and that the best resources are selected and acquired consistent with the solicitation requirements.

In addition to the requirements identified in CPUC Orders, the Scope of Work included in the Contract Work Authorization between Merrimack Energy and PG&E clearly identifies the tasks to be performed by the IE. These include the following tasks:

- Review and comment on the fairness, appropriateness, and implementation of PG&E's solicitation process, PG&E's evaluation methodology and PG&E's selection process with a focus on the design of the evaluation and selection process, definition of the products sought, evaluation criteria and selection protocols;
- Assess PG&E's methodology for evaluating offers that originate from the 2016 PV RFO, and analyze the results of PG&E's evaluation of offers;
- Assess and report on the degree to which PG&E's outreach to potential industry participants ("Participants") for the 2016 PV RFO is adequate, and whether the solicitation is robust;
- Identify whether any Participant in the 2016 PV PPA RFO received undue information or failed to receive due information, that advantaged or disadvantaged a Participant unfairly;
- Provide to PG&E, PG&E's Procurement Review Group (PRG), and the Energy Division of the CPUC presentations of the IE's findings;
- Participate, as needed, in any PRG and/or supplier meetings and /or teleconferences concerning the 2016 PV PPA RFO solicitation;
- Review and comment on the draft 2016 PV RFO documents. Documents to be reviewed include the protocol document, associated contracts and other data forms and related documents;
- Review and comment on the fairness of the project-specific negotiations and the reasonableness of the resulting executed contracts, and whether they merit CPUC approval;

- Monitor communications between PG&E and Participants and participate in meetings with Participants, as required;
- Independently evaluate each executed offer and comment on whether the selected contracts are the best overall offers received;
- Be available to testify as an expert witness in any CPUC proceeding regarding review of potential transactions arising from the 2016 PV PPA RFO; if appropriate, prepare direct and rebuttal testimony, respond to data requests, and perform other activities required as an expert witness;
- Prepare the IE reports for inclusion in any Advice Letter and/or Quarterly Compliance Report and/or Application filings, as needed.

With regard to the role of the IE, our objective is to ensure that the process is undertaken in a fair and equitable manner, that the Protocol documents and associated appendices are reasonably transparent and that the results of the offer evaluation and selection are accurate, reasonable and consistent. This role generally involves a detailed review and assessment of the evaluation process and the results of the quantitative and project viability analysis, if warranted.

This report provides an assessment of PG&E's Solar PV Program procurement process from development of the process through selection of the projects subject to contract approval. It is organized based on the template provided by the CPUC's Energy Division. This report addresses Merrimack Energy's assessment and conclusions with regard to the following questions:

1. Did PG&E initiate adequate outreach to potential bidders and was the solicitation robust?
2. Was PG&E's bid evaluation methodology designed such that all bids were fairly and reasonably evaluated?
3. Was PG&E's bid evaluation and selection process fairly administered?
4. Did PG&E make reasonable and consistent choices regarding which offers were rejected, which were short-listed, and which were brought to the CPUC for approval?

C. Description of IE Oversight Activities

In performing its oversight role, the IE participated in and undertook a number of activities in connection with the solicitation including providing comments on the protocol documents, participating in the Participants Conference, discussing internal RFO evaluation processes, organizing and summarizing the bids received, reviewing the

evaluation and selection process and results at each stage in the process, monitoring the status of short-listed offers, monitoring communications with bidders, communicating with PG&E's Project Manager to discuss RFO issues, and participating in meetings with the PRG. Merrimack Energy was retained by PG&E prior to the development of the First Year Solar PV PPA RFO process and therefore has had the opportunity to participate in and assess the development and implementation of the process, including lessons learned and benefits and shortcomings of the process. A list of the activities of the IE during the procurement process is described below.

Submitted Comments on RFO Protocol Design

Merrimack Energy submitted comments and questions on the design of the Solar PV Program PPA 2016 RFO documents included with PG&E's Advice Letter filing of November 28, 2016 (Advice Letter 4950-E). PG&E and Merrimack Energy also had discussions prior to completion of the RFO with an emphasis on issues such as process for meeting procurement targets, required revisions to the RFO, amount of MW to procure, evaluation methodology, project schedule, and basis for ranking and selecting projects.

Attendance at the Participants Webinar

The IE attended the Solar PV Program Bidders Webinar held by PG&E on December 21, 2016. The following agenda items were addressed at the Webinar:

- Solicitation Overview
- Eligibility Requirements
- PPA Overview
- Evaluation Methodology
- Offer Submittal Process
- Interconnection Process
- Q&A

PG&E also identified the updates from the 2014 PV PPA RFO that were included in the 2016 PV solicitation process. The major program updates include:

- The application of the Least Cost Best Fit ("LCBF") evaluation methodology;
- Updated TOD factors per the 2015 RPS Plan;
- The project must interconnect within the electric distribution or transmission system of PG&E, SCE. Or SDG&E;
- Phase II Interconnection Study or equivalent is required;
- Participants may offer projects as a Full Capacity, Partial Capacity, or Energy Only resource.

PG&E also confirmed that Sellers may choose the option to bid a single project with four variations. Variations include:

- Project size;
- Delivery term;

- Fixed Price vs Escalating price;
- Full (or partial) capacity deliverability status or energy only.

Bidders should submit their most competitive offer since a price refresh will not be allowed.

A total of 41 participants attended the Participants Webinar and eight Questions and Answers were posted on the website. The IE found the Webinar to be complete and thorough. The Webinar provided a significant amount of information on the nuances of the solicitation process which should assist the Participants to submit a complete and accurate proposal, including but not limited to directions on filling out the offer form, offer form sequencing and completion of the forms, and typical interconnection study timelines.

Monitored Communication with Bidders

Prospective Participants had the opportunity to submit questions to PG&E regarding the RFO via PG&E's Solar PV Program website. The RFO required that the IE should be copied on all correspondence between PG&E and the prospective Participant. The IE reviewed the email traffic between PG&E and Participants to assess if any issues were emerging and whether all Participants were treated fairly and equitably. In addition, PG&E posted questions and answers on its website received from Participants as well as through the Bidders Conference. PG&E posted eight Questions and Answers, most of which were discussed at the Participants Webinar.

Receipt of Offers

All offers were submitted by Participants to the PowerAdvocate Platform⁸ for the 2016 Solar PV RFO on January 18, 2017. The IE summarized the offers received and established a spreadsheet matrix of key information on each offer (e.g., price formula, expected generation, nameplate capacity, location, in-service date, deliverability status, and degradation rate) designed to track and summarize the offers received. The matrix also allowed PG&E and the IE to ensure that all offers were accounted for.

A total of 31 unique projects with 61 offer variations from 13 different counterparties, totaling 561 MW of unique capacity (1,129.4MW total counting all of the variations) were received on January 18, 2017. During the review and evaluation phase, 8 offers were eliminated from consideration.

A summary of the offers received are included as Appendix A.

Follow-up Communication Regarding Bid Eligibility

⁸ For this RFO, PG&E elected to use the PowerAdvocate Platform as a repository of the offers, as it has in other recent solicitations. Participants were required to post their offers and supporting information to the PowerAdvocate Platform established for this RFO. In contrast, for the previous two Solar PV PPA RFOs.

PG&E and the IE conducted follow-up calls to discuss the eligibility of offers subsequent to bid submittal. Two variants submitted by [REDACTED] were declared ineligible initially due to lack of site control. Two [REDACTED] variants were removed for consideration by the bidder because they were dependent on Offer #1 being accepted and no changes in pricing are allowed to update the variants as unique. One [REDACTED] project was declared ineligible due to interconnection study details [REDACTED]. In addition, [REDACTED] projects were eliminated for consideration because pairing the solar project with an Energy Storage option is not allowed as described in the PV Protocol.

Based upon review of the offers and based on the competitiveness of the list of offers, PG&E proceeded to conduct the economic evaluation of the remaining 53 variants.

Offer Selection Process

The IE and PG&E's RFO team convened a meeting in PG&E's offices to review the evaluation of the results of each offer and to rank the offers based on the best options for each offer. PG&E and the IE had discussions about the evaluation results and key drivers of the results, options for short listing the offers received, including maintaining both a primary list and wait list of offers in case offers did not meet the bid evaluation criteria or requirements of PG&E.

During a conference call with PG&E on March 16, 2017, the Solar PV RFO management team notified the IE that they will be petitioning to eliminate the procurement requirement and not move forward with any projects offered in the 2016 solicitation. [REDACTED]

PG&E decided to postpone the remainder of the RFO process until the CPUC had made a decision on how to proceed.

On May 26, 2017, the assigned commissioners issued a ruling in the 2017 RPS Plan Proceeding. The following statement was included in the ruling:

We note the following on January 22, 2016, PG&E filed a Petition for Modification of D.14-11-042 regarding 2016 and 2017 Solicitations in order to eliminate its RAM procurement requirement, but the requirement remains in effect, since the Commission has not granted the Petition.

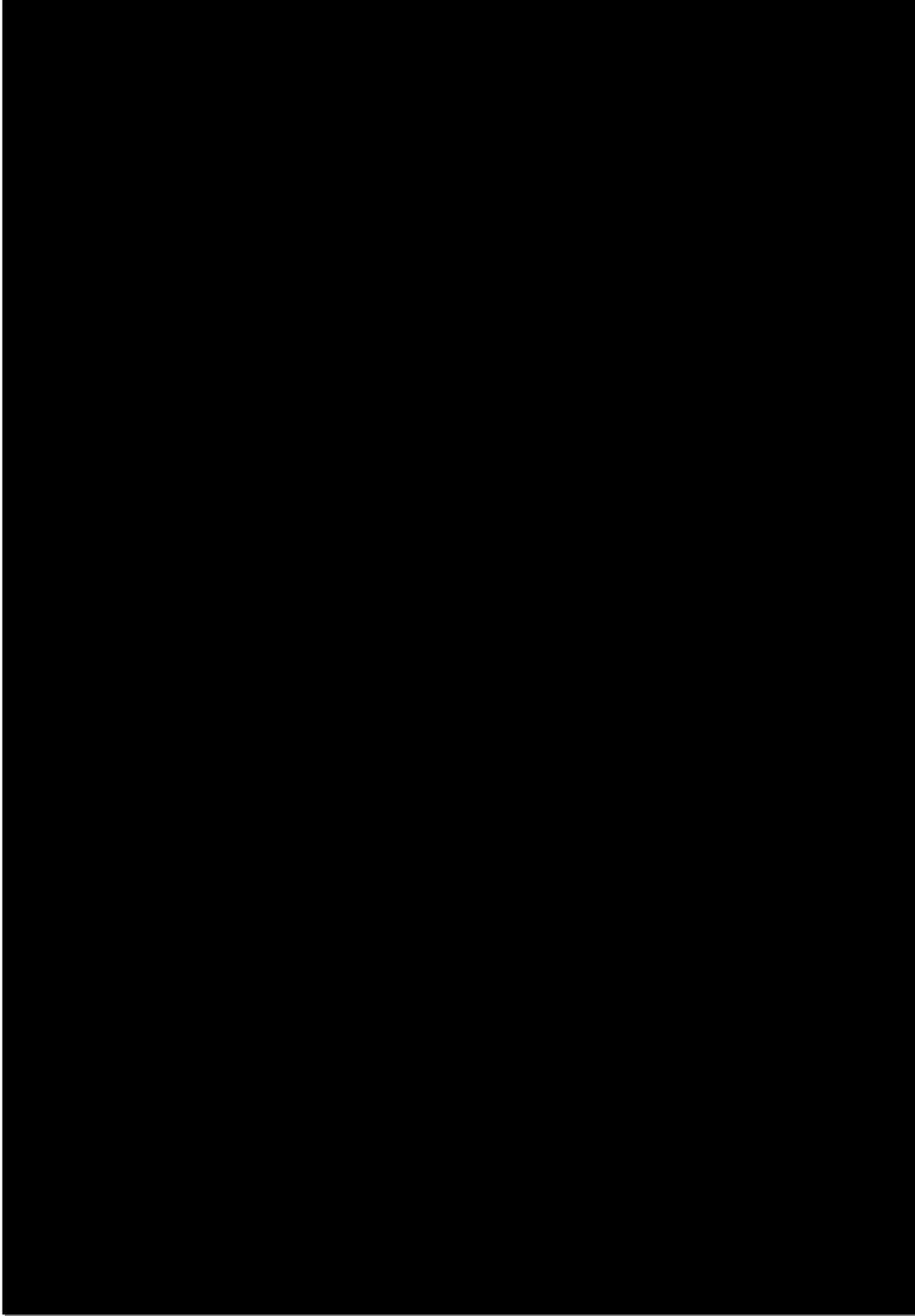
Therefore, PG&E was required to follow the directive and proceed with the procurement process. As a result, [REDACTED] projects were proposed for the primary selection group, with [REDACTED] projects placed on the waitlist.

Procurement Review Group (“PRG) Meeting – July 11, 2017

On July 11, 2017, PG&E presented its proposed shortlist and backup list to the PRG for consideration. PG&E’s presentation to the PRG provided an overall program recap, outlined the overall response to the RFO, described the Solar PV Program selection methodology, and informed the PRG of offers it was considering for selection as finalists in the Solar PV Program process. The presentation materials also included a summary of the offers, including contract capacity, term length, pre- and post-TOD price, levelized NMV, and levelized PAV (used to rank offers).

As identified in the RFO, PG&E indicated that it intended to select a group of primary offers that are the most competitive offers based on the PAV values that meet the procurement target for this solicitation, using the evaluation criteria described in the RFO. PG&E also indicated it would select a group of waitlisted offers should any primary selections fail to complete the RFO process or in the case that a selected offer is rejected by the bidder. PG&E indicated that participants of selected offers would be notified on July 14, 2017. The list of primary and backup offers selected is included in Table 1. The [REDACTED] comprised the primary list of offers selected, with the remaining offers comprising the backup list. PG&E also eliminated 26 variants of offers which were selected for either the primary or waitlist. These variants were ranked lower than the offers selected for the primary or waitlist.

Table 1: Initial List of Offers Selected



Merrimack Energy provided comments to PRG regarding the evaluation and ranking of the offers.

- Merrimack Energy reviewed the evaluation results and confirmed that the results were based on the input assumptions;
- 15 year offers evaluated well overall;
- The waitlist may be too extensive.

Participant Notification

Beginning of July 14, 2017, PG&E notified Participants of their status. Participants received an e-mail informing them that either an offer had either been selected as a Primary Offer, a Backup Offer, or the offer was not selected. Waitlisted offers would be notified on July 21, 2017 if the project has been removed from the waitlist and given an offer of a PPA. If the bidder would like to remain on the waitlist, it must sign this letter and email it back to PG&E by July 19, 2017. Bidders selected as a Primary Offer must provide the signed PPA and related documents back to PG&E by July 26, 2017 if they wished to continue in the process.

Final Selection

At the time the Selection letters were sent to the Participants, PG&E had selected the following projects in rank order as Primary Offers for PPA execution:

[REDACTED]
[REDACTED]
[REDACTED]

On July 19, 2017, [REDACTED] sent an e-mail to PG&E indicating that after further review they had decided not to move forward with [REDACTED] projects, the two lowest cost offers selected. In addition, [REDACTED] decided to withdraw their waitlisted offer, [REDACTED]. After consideration, PG&E decided to move down the waitlist and select [REDACTED] projects. This selection was [REDACTED], which the IE noted on a conference call with PG&E. The IE was also troubled that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As noted above, PG&E also established a section on its website for distribution of information to prospective Participants. The website contained all the pertinent solicitation documents, time tables, a list of questions and answers from the Participants Webinar, and a Frequently Asked Questions reference that contains a presentation on the interconnection process. A total of 8 questions and answers resulted from the Participants Webinar and were posted on the website. The IE found the website easy to access and navigate. All documents associated with the Solar PV Program RFO were included on the website and were reasonably easy to identify, access, and download.

PG&E used the PowerAdvocate Platform on a limited basis for this solicitation. Participants interested in submitting an offer were required to register with PowerAdvocate before submitting an offer into the RFO. All Bid Package materials were required to be submitted to the PowerAdvocate site for the RFO by the scheduled time and date. Instructions to inform the Participant how to use the PowerAdvocate website were provided on the PG&E website for the solicitation.

The IE also had the opportunity to review the solicitation documents and materials prior to completion and provided comments to PG&E's Project Manager. The IE's comments were initially designed to ensure the information was consistent and clear to Participants. The IE also held discussions with PG&E's Project Manager to review issues based on PG&E's experiences associated with the methodologies used for the RAM program solicitations and the proposed revisions to the Solar PV Program including the pricing mechanism, calculation of transmission adders, and the implications of full capacity deliverability requirements relative to Energy-Only deliverability for RA value calculations.

Overall, the IE felt that the RFO documents and follow-up information provided by PG&E were reasonably clear and concise for Participants to decide if they wanted to participate and to understand the requirements for competing.

In addition, PG&E established a website for the program and provided a significant base of information which described the program and allowed the Participant the opportunity to craft an effective and conforming proposal. The website contained the following documents:

- Solar PV RFO Protocol Document and all Appendices
 - Appendix A – PV Offer Form
 - Appendix B – PV Program Power Purchase Agreement
 - Appendix C – Site Control Questionnaire and Attestation
 - Appendix D – Acknowledgement and Commitment of Site Owner
- Schedule for the 2016 Solar PV PPA RFO
- Google-based map of service territory
- Participants Webinar Presentation
 - 2016 Solar PV RFO presentation PDF
 - 2016 Solar PV RFO audio file

- 2016 Solar PV RFO transcript from webinar
- 2016 Solar PV Webinar attendee list
- Conference Questions and Answers
- Power Advocate instructions and registration information
- Distribution and Transmission Information
 - General Interconnection Procedure
 - Fast Track Procedure
 - Independent Study Process
 - Cluster Study Process
 - Contact and website reference for Distribution and Transmission Interconnection information
- Contact Information for information or questions about PV RFO
- Frequently Asked Questions
 - PV RFO General Program Questions
 - Offer Sequencing Guide
 - How to create a GIS file using Google Earth
 - PPA Guide for the 2016 PV PPA RFO
 - Sample PPA Cover Sheet
 - Sample Appendix XIII
 - Sample Single Line Diagram
- Advice Letter 4950-E

As noted, PG&E held a Photovoltaic Program Power Purchase Agreements Request for Offers Participants Webinar for the 2016 Solicitation on December 21, 2016, shortly after launching the solicitation. The Participants Webinar addressed the following topics:

- Solicitation Overview
- Eligibility Requirements
- PPA Overview
- Evaluation Methodology
- Offer Submittal Process
- Interconnection Process
- Q&A

In addition, PG&E has also offered the opportunity for Participants to engage in individual one-on-one de-briefing conference calls to discuss their offers. To date only a couple bidders requested a follow-up meeting to discuss the evaluation results.

B. Identify Guidelines Used to Determine Adequate Robustness of a Solicitation. Was the Solicitation Adequately Robust?

With regard to assessing whether the response to the solicitation was adequately robust, there are several criteria to consider:

- Was the response to the solicitation commensurate with the level of outreach?

- Did the solicitation encourage a diverse response from Participants in terms of products requested, project structure, pricing options, etc.?
- Was the response large with respect to the number of proposals, megawatts (“MW”) offered and amount of megawatt-hours (“MWh”) bid?

The overall result of this outreach activity was a robust response from Participants. Offers were also received from a diverse group of Sellers involving a few photovoltaic technology options. Information regarding the offers, MW and MWh quantities offered, project location, and evaluation results were compiled by both PG&E and the IE. Appendix A contains a summary of the offers received. As illustrated in Appendix A PG&E received 31 unique offers totaling 561 MW for a 68.75 MW requirement. This resulted in a response of over 8 times the amount of capacity sought through the RFO. The response from Participants was more robust in this solicitation as compared to the 2014 solicitation.

In conclusion, the response of the market to PG&E’s Solar PV Program RFO is evidence that the outreach activities of PG&E were effective and Sellers felt they had an adequate opportunity to receive a contract from the process.

C. Did the IOUs Seek Adequate Feedback About the Bidding/Bid Evaluation Process From All Bidders After the Solicitation Was Complete?

PG&E’s project team members were involved in regular communications with prospective Participants, particularly after submission of the offers. As a result, PG&E staff and prospective Participants were actively engaged throughout the process.

Also, CPUC Resolution E-4299 required PG&E to convene a Program Forum within 60 days of each solicitation’s closing date to identify Program components that may need refinement as experience is gained with the program. This forum may be used as a venue to solicit feedback from bidders for the next solicitation.

D. Was the Outreach Sufficient and the Materials Clear Such That the Bids Received Meet the Needs the Solicitation Was Intending to Fill?

The IE is of the opinion that the outreach efforts of PG&E were sufficient and consistent with previous solicitations for this program. Furthermore, the IE is of the opinion that the materials available for this solicitation were reasonably clear and complete. In addition, PG&E conducted a Participants Webinar to inform prospective Participants of the requirements of the solicitation as well as a Q&A process to allow Participants to ask questions about aspects of the solicitation which they did not fully understand.

E. Any Other Relevant Information or Observations

The IE believes that PG&E undertook reasonable and consistent outreach initiatives consistent with previous similar processes that also had reasonably robust responses. While the eligibility requirements for this solicitation were stricter and were consistent with more mature projects (i.e. requirements for Phase II interconnection study and site control), the response to the RFO was reasonable and led to a competitive process.

IV. Fairness and Appropriateness of the Solar PV Program RFO Bid Evaluation and Selection Methodology and Design

A. Framework and Principles for Evaluating PG&E's Methodology

This section of the report addresses the principles and framework underlying Merrimack Energy's review of PG&E's methodology for the Solar PV Program offer evaluation and selection. Key areas of inquiry by the IE and the underlying principles used by the IE to evaluate the methodology include the following:

- Were the procurement targets, products solicited, principles and objectives clearly defined in PG&E's RFO and other materials?
- Were the bid evaluation and selection process and criteria reasonably transparent such that bidders would have a reasonable indication as to how they would be evaluated and selected?
- Was PG&E's bid evaluation based on and consistent with the information requested in the RFO to be submitted by bidders in their proposal documents?
- Did the evaluation methodology reasonably identify the quantitative and qualitative criteria and describe how they would be used to qualify and rank offers?
- Were the bid evaluation criteria consistently applied to all offers?
- Does the price evaluation methodology allow for consistent evaluation of bids of different sizes and in-service dates?
- Did the bid evaluation criteria and evaluation process contain any undue or unreasonable bias that might influence project ranking and selection results or in any way favor affiliate bids?
- Was the RFO clear and concise to ensure that the information required by PG&E to conduct its evaluation was provided by project sponsors?

B. Description of PG&E's Evaluation Methodology

This section of the report provides an overall description of PG&E's evaluation methodology and criteria applicable to the 2016 Solar PV Program RFO. As previously,

PG&E clearly identified its target for this RFO of 68.75 MW. In addition, the methodology to be used by PG&E to evaluate and rank offers was clearly described in the RFO document as well as in the Webinar materials. Based on the nature of the program, PG&E has used essentially a two-step process that includes: (1) a screening of offers on a “pass-fail” basis against the minimum eligibility requirements that participants have to meet to be eligible to participate as well as other requirements for participation including: price, site control (i.e. Participant must attest to site control), interconnection and participant experience and; (2) Least Cost Best Fit criteria which includes qualitative and quantitative criteria. The quantitative evaluation takes into account the price, TOD-factors, location adjustments, integration costs, and capacity and energy benefits.

With regard to price, Participants are required to submit either a fixed product price (in \$/MWh) or escalated price based on a fixed annual escalation rate. Participants must submit with their offer their best and final price using the Energy Pricing Sheet of the Offer Form in Appendix A to this solicitation. PG&E will not consider updated or refreshed price offers submitted after the Offer submittal deadline. Product quantities can vary annually to reflect degradation of the facility, if applicable.

Pursuant to the PPA, Sellers will be paid the contract price multiplied by the applicable TOD factor for each hour. For purposes of bid evaluation, PG&E will levelized bid prices after applying the applicable standard Time of Delivery (“TOD”) factors as listed in the RFO Protocol document.

For evaluation purposes, PG&E used the Commission approved Least Cost-Best FIT (“LCBF”) methodology, pursuant to D.14-11-042, which includes a preference for shorter delivery terms.

The Market Valuation compares an Offer’s costs to its market value. Pursuant to D.12-11-016, NMV is calculated for each Offer as follows:

$$\begin{aligned}\text{Net Market Value: } R &= (E+C) - (P+T+G+I+DE) \\ \text{Adjusted Net Market Value: } A &= R + S\end{aligned}$$

Where:

E = Energy Value

C = Capacity Value

P = Post-Time-Of-Delivery (TOD) Adjusted Power Purchase Agreement (PPA) Price

T = Transmission Network Upgrade Cost

G = Congestion Cost

I = Integration Costs

S = Ancillary Service Value

DE = Debt Equivalence

Net Market Value mainly reflects the costs and benefits based on the current market conditions, as opposed to its specific impact on PG&E's aggregate portfolio positions. Each component is quantified and expressed in terms of levelized dollars per MWh. The levelized dollars per MWh are derived by taking the present value of each component expressed in nominal dollars and divided by the present value of MWhs. The present values are calculated using PG&E's approved after-tax weighted cost of capital.

The Energy Value of an offer reflects the market value of the energy deliveries. This is based on the hourly generation profile of the offer, the delivery date and term, and delivery location. The energy value for each hour of the delivery profile is based on the estimated energy delivery in the hour times the appropriate forward price curve.

The value of capacity associated with each offer will be determined based on the projected monthly quantity of net qualifying capacity multiplied by the monthly capacity price. Resources with an expected finding of full or partial capacity deliverability from the CAISO will be attributed the capacity value. It will be assumed that the qualifying capacity is zero for energy-only deliveries.

PG&E calculates the Post-TOD Adjusted PPA Price as the present value of hourly PPA payments divided by the total MWh of energy. The hourly PPA payment is calculated as the expected hourly generation delivered by the generation profile, the contract price, and the time-of-delivery (TOD) factor for the corresponding TOD period. Integration cost is calculated pursuant to D.14-11-042. The Renewable Integration Cost Adder includes variable costs (\$3/MWh for solar) and fixed costs. Fixed costs reflect the monthly increase or decrease in the need for flexible RA associated with one MW of installed capacity of wind or solar.

Once the Net Market Value has been calculated, the evaluation takes the PAV adjustment factors into account to calculate the final Portfolio Adjusted Value ("PAV"). The PAV adjustments reflected in the evaluation include: (1) PAV location adjustment based on location of the project in PG&E's service territory or that of another utility; (2) RPS Portfolio Need which is based on an offer's contribution to PG&E's overall portfolio need for RPS energy; and (3) Energy Firmness (which is equal to zero for this solicitation). The offers were ranked by levelized PAV (\$/MWh) for the final selections.

The final component of the evaluation is Seller Concentration. PG&E is not limiting the number of Offers submitted by a single participant, but in order to ensure the RFO remains competitive, PG&E may cap the amount awarded in the RFO at 20 MW to a single participant.

criteria should lead to more mature projects and projects with a high likelihood of being successfully developed.

The IE would also suggest that PG&E reassess the [REDACTED] to ensure that the [REDACTED] is reasonable for this type of resource, given the size of the projects and potential impact on the utility system.

In the 2014 Solar PV Program RFO, the IE identified several issues that should be considered in future solicitations. These included:

1. Should full capacity deliverability be a threshold requirement or should Participants be allowed to offer an energy only option. If the latter, will PG&E be required to determine the value of RA capacity based on full capacity deliverability?
2. Is the 18-month time requirement to complete a project after CPUC approval reasonable or does it shift too much risk to Participants. Should the COD date be extended to 36 months?
3. In this solicitation, the transmission screen was an important factor in the analysis. For future solicitations, how should this assessment be included in the evaluation?

The IE feels that this solicitation has effectively dealt with the above issues raised by the IE and should be maintained in a future solicitation.

E. Additional Information or Observations Regarding PG&E's Evaluation Methodology

No additional information or observations are provided.

V. Did PG&E Fairly Administer the Evaluation Process?

A. Principles and Guidelines Used to Determine Fairness of Process

In evaluating PG&E's performance in implementing the 2016 Solar PV Program solicitation process, Merrimack Energy has applied a number of principles and factors, which incorporate those suggested by the Commission's Energy Division as well as additional principles that Merrimack Energy has used in its oversight of other competitive bidding processes. These include:

- Were all Participants treated the same regardless of the identity of the Participants?
- Were Participants questions answered fairly and consistently and the answers made available to all?

- Was the economic evaluation of the bids fair and consistent?
- Were the requirements listed in the RFO Protocol applied in the same manner to all proposals?
- Was there evidence of any undue bias regarding the evaluation and selection of different type of product, project structures, or bid sizes that cannot be reasonably explained?
- Did PG&E ask for “clarifications” in a manner that provided the bidder an unfair advantage over others?
- Did all bidders have access to the same information?

B. Description of IE Methodology Used to Evaluate Administration of PG&E’s Solar PV Program Process

As previously discussed, the IE was actively involved in all phases of the process. The IE was copied on all emails exchanged between PG&E and Participants including having direct access to all offers via PowerAdvocate, as well as all supporting documents, and contracts. The IE also compiled summaries of all offers and was able to follow the progress of the process throughout. In addition, the IE and PG&E’s Project Manager had regular conference calls to discuss the progress of the solicitation process and any issues that arose during the process.

Based on our involvement, we conclude that PG&E reasonably followed the criteria outlined in the 2016 Request for Offers. In addition, the evaluation was consistent and equitable with regard to all offers. PG&E’s overall approach for this initial solicitation was to provide the opportunities for bidders to conform their offers to solicitation requirements within a reasonable timeframe.

Based on our assessment of the evaluation process relative to the above criteria, it is our opinion that all Participants were treated fairly and consistently and all generally had access to the same amount and quality of information.

PG&E maintained a website dedicated to the 2016 Solar PV Program and posted all documents and questions submitted by Participants at the Participants Webinar. The Participants Webinar held by PG&E provided detailed information to all bidders with regard to the solicitation process (i.e. evaluation methodology and the requirements for Participants to provide the information requested). We also observed no difference in the treatment of Participants regarding clarification questions, correspondence and communications with Participants, and follow-up contacts with Participants that were not selected. Finally, PG&E implemented the evaluation criteria and methodologies as outlined in the RFO and the internal RFO Evaluation Protocols.

C. Results Analysis

Identify instances where the IE and the IOU disagreed in the evaluation process

While the IE did raise a few issues that differed from the approach suggested by PG&E, the parties generally agreed on issues associated with the evaluation process. For example, both the IE and PG&E prepared summaries of the offers received. While PG&E's PAV calculation utilized internal forecasts and values; however the IE was able to align the final values and ranking with PG&E's evaluation model. While the IE did consider several options, PG&E's initial selection of resources as submitted to the PRG was the lowest cost portfolio. [REDACTED]

D. Administration of the Bid Evaluation Process

While the IE did raise a few issues that differed from the approach suggested by PG&E, the parties ultimately agreed on issues associated with the evaluation process. For example, both the IE and PG&E prepared summaries of the offers received. Merrimack Energy's list had some inconsistencies. However, the parties were able to reconcile the differences that each had in identifying the offers received.

E. Any Other Relevant Information

VI. Project Specific Contract Negotiations

As described in the Protocol, the terms and conditions of the PV PPA are non-negotiable. PG&E will accept changes to the PV PPA only with regard to Project-specific details identified in the PV PPA cover sheet. For projects being bid as fully or partially deliverable, the PPA includes an estimate of when full or partial capacity deliverability status will be attained. Seller is contractually bound by the estimate. If Seller has not achieved full or partial capacity deliverability status consistent with that in the Offer by the designated time, then the Seller will be subject to contractual penalties. Any other changes made to the terms and conditions of the form PV PPA will result in rejection from this RFO.

Other important provisions of the contract include:

- Commercial operation must occur within 36 months of the Effective Date of the PPA, with a potential 6-month permitted extension. Sellers must provide progress development updates on a monthly basis;
- Failure to meet the guaranteed commercial operation date after any excused delay is an Event of Default which would allow PG&E to terminate the PPA and retain the Project Development Security as damages for the Seller’s default;
- PG&E will pay for energy deliveries up to 100% of the Contract Quantity in a given year;
- Based on the performance characteristics of As-Available technologies, Sellers must agree to deliver a minimum quantity, which is the Guaranteed Energy Production (“GEP”) of the Product. For as-available resources this is equal to 160% over two consecutive years;
- PG&E is the Scheduling Coordinator;
- Seller must curtail energy deliveries in response to curtailment requests from the CAISO, PTO or Buyer;
- PG&E has the right to require the seller to curtail energy deliveries during the “Buyer Curtailment Period” for unlimited hours per year and PG&E will pay for such curtailed energy at the contract price.

PG&E executed PPAs as a result of this solicitation. A summary of the project-specific details for each project is included in Table 3.

Table 3: Summary of Contract Parameters

Project Details	Recurrent RE Gaskell West 3	Recurrent RE Gaskell West 4	Recurrent RE Gaskell West 5
Location	Corcoran, CA	Joaquin, CA	Five Points, CA
Interconnection Point	Whirlwind Substation	Whirlwind Substation	Whirlwind Substation
Contract Capacity (MWac)	20	20	20
Delivery Term (Years)	15	15	15
COD Guaranteed	6/30/2020	6/30/2020	6/30/2020
Project Configuration	Single Axis Tracker	Single Axis Tracker	Single Axis Tracker
Pre-TOD Contract Bid Price (\$/MWh)	██████	██████	██████
Price Escalation Rate	██	██	██
Generation (MWh) – Year 1	61,916.56	61,916.56	61,916.56
Development Security	██████████	██████████	██████████
Delivery Term Security	██████████	██████████	██████████
Deliverability Status	FCDS	FCDS	FCDS

As noted in Table 3, all primary projects have Full Capacity Deliverability, meaning that all of these projects received RA value in the evaluation. The issues associated with execution of the PPAs primarily involved insertion of project specific information including the appropriate security levels and project schedule given the nature of the standard contract.

VII. Conclusions and Recommendations

C. Conclusions

For the reasons stated herein, Merrimack Energy concludes that the offer selection decisions by PG&E in the 2016 Solar PV RFO process were reasonable and generally based on the requirements, procedures, evaluation criteria and stated preferences set forth in the RFO. Furthermore, the offers and PPAs were selected through a competitive solicitation process with a reasonably robust response. In implementing the process, the IE found that PG&E was fair and reasonable to all Participants, provided consistent and thorough information to Participants, and was unbiased in the treatment of any Participant. Furthermore, we also found that PG&E's project team was very responsive to the requirements of Participants and treated all Participants equally.

However, the selected offers fell short of the procurement target of 68.75 MW. This was largely due to the fact that all of the highly ranked offers were all over 18 MW, with most of the proposals offering the full 20 MW. As a result, PG&E would acquire more than the target if it decided to select an additional project. Any smaller proposals were far down in the rankings.

[REDACTED]

From a contract perspective, the selected bidder agreed to the provisions of the PPA as required.

Merrimack Energy therefore recommends approval of the contracts.

⁹ [REDACTED]

B. Observations

There were several observations which can be gleaned from the solicitation process:

- The response to the solicitation was robust, with participation from both established firms and a few new entrants;
- PG&E followed its protocols throughout the process;
- PG&E was inclusive in keeping Participants in the process and not unduly eliminating offers;
- [REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED];
- [REDACTED]
[REDACTED]
[REDACTED];
- Overall, the process was a very transparent process.

C. Recommendations

The IE recommends that PG&E encourages bidders to offer multiple sizes and contract lengths for each project to allow PG&E to effectively develop a portfolio that closely matches their remaining requirements. In addition, PG&E should reassess the reasonableness of the [REDACTED] in future solicitations, which had a major impact on the final PAV values.

Appendix A: List of Offers Received



Public Appendix G

Location of Bids

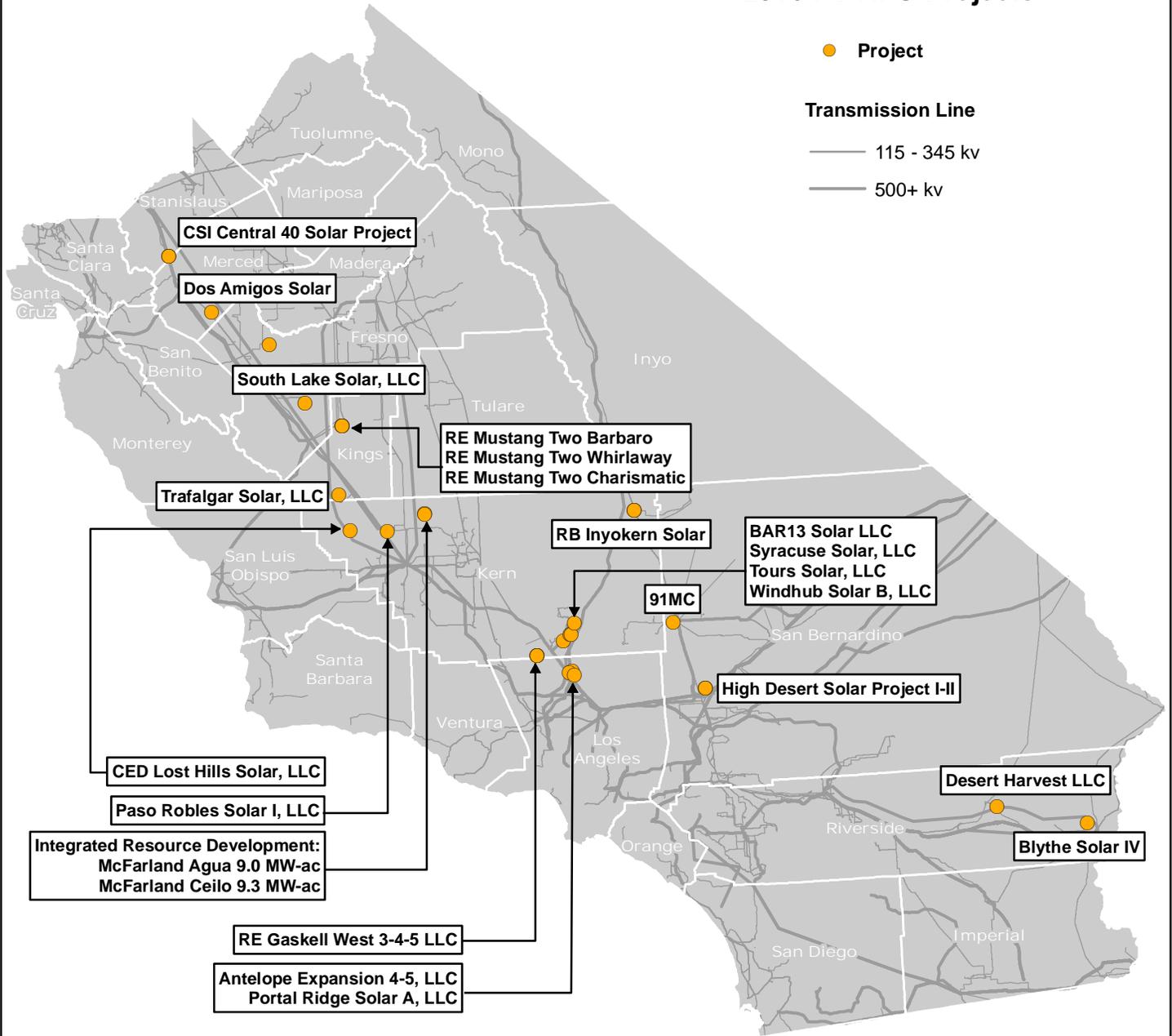
2016 PV RFO Projects

● Project

Transmission Line

— 115 - 345 kv

— 500+ kv



**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

AT&T	Don Pickett & Associates, Inc.	Office of Ratepayer Advocates
Albion Power Company	Douglass & Liddell	OnGrid Solar
Alcantar & Kahl LLP	Downey & Brand	Pacific Gas and Electric Company
Anderson & Poole	Ellison Schneider & Harris LLP	Praxair
Atlas ReFuel	Energy Management Service	Regulatory & Cogeneration Service, Inc.
BART	Evaluation + Strategy for Social Innovation	SCD Energy Solutions
Barkovich & Yap, Inc.	G. A. Krause & Assoc.	SCE
Braun Blaising Smith Wynne P.C.	GenOn Energy, Inc.	SDG&E and SoCalGas
CalCom Solar	Goodin, MacBride, Squeri, Schlotz & Ritchie	SPURR
California Cotton Ginners & Growers Assn	Green Charge Networks	San Francisco Water Power and Sewer
California Energy Commission	Green Power Institute	Seattle City Light
California Public Utilities Commission	Hanna & Morton	Sempra Utilities
California State Association of Counties	ICF	Southern California Edison Company
Calpine	International Power Technology	Southern California Gas Company
Casner, Steve	Intestate Gas Services, Inc.	Spark Energy
Cenergy Power	Kelly Group	Sun Light & Power
Center for Biological Diversity	Ken Bohn Consulting	Sunshine Design
City of Palo Alto	Leviton Manufacturing Co., Inc.	Tecogen, Inc.
City of San Jose	Linde	TerraVerde Renewable Partners
Clean Power Research	Los Angeles County Integrated Waste Management Task Force	Tiger Natural Gas, Inc.
Coast Economic Consulting	Los Angeles Dept of Water & Power	TransCanada
Commercial Energy	MRW & Associates	Troutman Sanders LLP
Cool Earth Solar, Inc.	Manatt Phelps Phillips	Utility Cost Management
County of Tehama - Department of Public Works	Marin Energy Authority	Utility Power Solutions
Crossborder Energy	McKenna Long & Aldridge LLP	Utility Specialists
Crown Road Energy, LLC	McKenzie & Associates	Verizon
Davis Wright Tremaine LLP	Modesto Irrigation District	Water and Energy Consulting
Day Carter Murphy	Morgan Stanley	Wellhead Electric Company
Defense Energy Support Center	NLine Energy, Inc.	Western Manufactured Housing Communities Association (WMA)
Dept of General Services	NRG Solar	Yep Energy
Division of Ratepayer Advocates	Nexant, Inc.	