MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, April 5, 2018
2:00 p.m.

Los Angeles County Hall of Administration
Room 140
500 West Temple Street
Los Angeles, California 90012

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Julie Gomez, at least 2 working days before the meeting at jgomez@ceo.lacounty.gov or (213) 974-1172. Notification in advance of the meeting will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.

If you wish to speak to the Board, please fill out a speaker's slip located on the tables as you enter the Board Chambers. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of the staff who will distribute the information to the Board members and other staff.
Members of the public may also participate in this meeting remotely at the following addresses:

County of Ventura Government Center  
CEO Large Conference Room  
800 S. Victoria Avenue, Ventura CA 93009

Calabasas City Hall – Council Conference Room  
100 Civic Center Way, Calabasas, CA 91302

Whittier City Hall – Administration Committee Room  
13230 Penn Street, Whittier, CA 90602

I. WELCOME AND ROLL CALL

II. PUBLIC COMMENT

This item is reserved for persons wishing to address the Board on any CPA-related matters not on today’s agenda. Public comments on matters on today’s agenda shall be heard at the time the matter is called.

As with all public comment, members of the public who wish to address the Board are requested to complete a speaker's slip and provide it to CPA staff. Speakers are customarily limited to two minutes, but an extension can be provided at the discretion of the Board Chair.

III. CONSENT AGENDA

1. Approve Minutes from March 1, 2018 Board of Directors Regular Meeting
2. Approve Minutes from March 6, 2018 Board of Directors Special Meeting
3. Approve Minutes from March 21, 2018 Board of Directors Special Meeting
4. Designation of Jacquelyn Betha as Board Secretary Effective April 6, 2018
5. Approve Amendment #2 to the Joint Powers Authority Agreement
6. Approve Employee Benefits Policy
7. Adopt Resolution No. 18-004 Declaring the Initial Participants of the CPA Program
IV. REGULAR AGENDA

8. Election of At-Large Representatives to the Executive Committee

9. Adopt Resolution No. 18-005 to Provide Delegation of Authority to the Executive Director to Enter into Contracts for Energy Procurement

10. Adopt Resolution No. 18-006 to Approve Rates for Phase 2

V. LEGISLATIVE AND REGULATORY REPORT

VI. EXECUTIVE DIRECTOR REPORT

VII. CHAIR ANNOUNCEMENTS

VIII. BOARD MEMBER COMMENTS

IX. ADJOURN

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the County of Los Angeles, Chief Sustainability Office, Kenneth Hahn Hall of Administration, Room 493, 500 West Temple Street, Los Angeles, CA 90012, for the purpose of making those public records available for inspection. The documents are also available on CPA's internet website at www.cleanpoweralliance.org.
I. WELCOME AND ROLL CALL

Chair Mahmud called the meeting to order at 2:08pm.

Chair Mahmud announced that she would modify the sequence of agenda, starting with Item 7, moving to consent agenda followed directly by closed session, and then continuing with the balance of the open session. She also noted that she would be removing item 8 from the agenda.

Secretary Gomez conducted roll call.

<table>
<thead>
<tr>
<th></th>
<th>City</th>
<th>Name</th>
<th>Role</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agoura Hills</td>
<td>Harry Schwarz</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>2</td>
<td>Alhambra</td>
<td>Jeff Maloney</td>
<td>Alternate</td>
<td>Present</td>
</tr>
<tr>
<td>3</td>
<td>Arcadia</td>
<td>Sho Tay</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>4</td>
<td>Beverly Hills</td>
<td>Julian Gold</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>5</td>
<td>Calabasas</td>
<td>John Bingham</td>
<td>Alternate</td>
<td>Present</td>
</tr>
<tr>
<td>6</td>
<td>Camarillo</td>
<td>Tony Trembley</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>7</td>
<td>Carson</td>
<td>Jawane Hilton</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>8</td>
<td>Claremont</td>
<td>Corey Calaycay</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>9</td>
<td>Culver City</td>
<td>Meghan Sahli-Wells</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>10</td>
<td>Downey</td>
<td>Alex Saab</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>11</td>
<td>Hawaiian Gardens</td>
<td>Myra Maravilla</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>12</td>
<td>Hawthorne</td>
<td>Angie Reyes English</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>13</td>
<td>Los Angeles County</td>
<td>Sheila Kuehl</td>
<td>Director</td>
<td>Present</td>
</tr>
</tbody>
</table>
Minutes of the March 1, 2018 Meeting of the LACCE Board of Directors

<table>
<thead>
<tr>
<th></th>
<th>City</th>
<th>Name</th>
<th>Position</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Malibu</td>
<td>Craig George</td>
<td>Alternate</td>
<td>Present</td>
</tr>
<tr>
<td>15</td>
<td>Manhattan Beach</td>
<td>Amy Howorth</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>16</td>
<td>Moorpark</td>
<td>Janice Parvin</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>17</td>
<td>Ojai</td>
<td>Michelle Ellison</td>
<td>Alternate</td>
<td>Present</td>
</tr>
<tr>
<td>18</td>
<td>Paramount</td>
<td>Tom Hansen</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>19</td>
<td>Redondo Beach</td>
<td>Christian Horvath</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>20</td>
<td>Rolling Hills Estates</td>
<td>Steve Zuckerman</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>21</td>
<td>Santa Monica</td>
<td>Kevin McKeown</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>22</td>
<td>Sierra Madre</td>
<td>John Harabedian</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>23</td>
<td>Simi Valley</td>
<td>Mike Judge</td>
<td>Director</td>
<td>Absent</td>
</tr>
<tr>
<td>24</td>
<td>South Pasadena</td>
<td>Diana Mahmud</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>25</td>
<td>Temple City</td>
<td>Nanette Fish</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>26</td>
<td>Thousand Oaks</td>
<td>Claudia Bill de la Peña</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>27</td>
<td>Ventura County</td>
<td>Linda Parks</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>28</td>
<td>West Hollywood</td>
<td>Lindsey Horvath</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>29</td>
<td>Whittier</td>
<td>Joe Vinatieri</td>
<td>Alternate</td>
<td>Present</td>
</tr>
</tbody>
</table>

A quorum was established.

Before beginning public comment, Chair Mahmud asked if there were any members of the public at remote meeting locations wishing to address the Board. There were none.

II. PUBLIC COMMENT

Jian Zhang, GridX
(Please see attached document Mr. Zhang has provided for distribution to the Board.)

Scott Engstrom, GridX

III. REGULAR AGENDA

7. Public Hearing Item: Adopt Resolution No. 18-003 to Approve Addendum No. 2 to the Implementation Plan and Authorize Staff to Submit the
Minutes of the March 1, 2018 Meeting of the LACCE Board of Directors

Addendum as attached, or substantially similar, to the California Public Utilities Commission on March 1, 2018.

Vice Chair Kuehl moved to adopt the resolution. Director McKeown seconded.

It was noted by Chair Mahmud that due to Brown Act requirements, roll call votes must be conducted for every item when there are Board members participating from satellite meeting locations.

Roll call vote was conducted, and the motion passed unanimously.

IV. CONSENT AGENDA

1. Approve Minutes from February 1, 2018 Board of Directors meeting
2. Approve Amended Employment Agreement for Executive Director
3. Approve Increase in Executive Director Expenditure Authority to $50,000
4. Approve Increase of Tier 1 Renewable Content from 33% to 36%
5. 30-Day Notice of Intent to Amend Joint Powers Authority (JPA) Agreement to reflect the Authority’s Name to Clean Power Alliance of Southern California
6. Approve Grace Period Extension Request from City of Oxnard

Director Lindsey Horvath moved to approve consent agenda. Director Calaycay seconded.

Director Maravilla requested to pull Item 1 for a minor correction to the February 1 minutes.

Director Parks moved to approve the minutes as amended as well as the other consent items. Motion was seconded by Director Kuehl.

The motion was approved by a unanimous roll call vote.

V. CLOSED SESSION

1. PUBLIC EMPLOYMENT
   (Government Code Section 54957)
   Recruitment of General Counsel
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
(Paragraph (2) of subdivision (d) of Government Code Section 54956.9)  
Significant exposure to litigation (one case)  

The Board entered closed session. No action was taken on the closed session items.  

VI. CONTINUATION OF REGULAR AGENDA  

9. Authorize CPA Executive Director, in Consultation with the Board Chair, to Negotiate and Execute TEA Task Order 2 for Power Procurement and Advisory Services  

Director McKeown moved to approve the item. Director Zuckerman seconded. The motion passed by unanimous roll call vote.  

10. Approve Selection of River City Bank for Banking and Credit Services and Delegate Authority to the Executive Director to Negotiate and Execute Necessary Contracts in Coordination with the Board Chair  

Director Maravilla moved to approve the item. Seconded by Director Fish. The motion passed by unanimous roll call vote.  

11. Approve Selection of the Energy Coalition for Communications and Outreach Services and Delegate Authority to the Executive Director to Negotiate and Execute Necessary Contracts in Coordination with the Board Chair  

Director Gold moved to approve the item. Director Christian Horvath seconded. The motion passed by unanimous roll call vote.  

12. Approve New Clean Power Alliance Logo  

Director Howorth moved to approve the item. Director Hilton seconded. The motion passed by unanimous roll call vote.  

13. Approve Formation of Committees and Working Groups  

Executive Committee formation approved by a unanimous roll call vote. Director McKeown moved to approve the item. Director Kuehl seconded.  

Chair and Vice Chair also announced they had selected the following Standing and Ad-Hoc Committee Chairs:  

Standing
Finance – Director Julian Gold
Energy Planning and Resources – Director Carmen Ramirez
Legislative and Regulatory - Director Lindsey Horvath

Ad Hoc
Communications and Outreach - Director Meghan Sahli-Wells
Personnel and Operating Policies and Procedures – Director Steve Zuckerman
Community Advisory Development Committee - Director Angie Reyes

English

VII. LEGISLATIVE AND REGULATORY UPDATE

Chair Mahmud recommended that Board members read the legislative and regulatory staff report in the agenda packet in light of the late hour.

VIII. EXECUTIVE DIRECTOR REPORT

Executive Director Ted Bardacke gave brief remarks and updates, noting the late hour, and introduced the new CPA Executive Assistant and Board Secretary Jacquelyn Betha.

IX. BOARD MEMBER COMMENTS

Board member questions and comments were raised regarding Item 7, ex-parte communications policy, electronic agenda management, and default renewable tier selections.

X. REPORT FROM THE CHAIR

Due to the late hour, Chair Mahmud waived the Chair’s report, only announcing that interested at-large Executive Committee candidates should provide notice to staff of their intent to participate as a candidate in the elections by March 26th.

XI. ADJOURN – TO APRIL 5, 2018

Meeting adjourned at 5:20pm.
Dear Mr. Bardacke:

Thank you for taking time for the introductory meeting yesterday. This letter serves as confirmation of GridX's desire to compete for Clean Power Alliance of Southern California (CPA) Data Management RFP if the opportunity arises. GridX is a qualified vendor as we currently provide Data Management and Billing services to both CCA and utility companies and was selected over Calpine in two previous CCA Data Management RFPs. I ask that you please share this letter with the members of CPA’s Board.

As discussed in our meeting, GridX is a leading provider of Big Data Billing, Settlement, Data Management and Advanced Analytics Technology for both incumbent utilities and CCA’s. We provide a complete suite of applications to enable utilities and CCA’s to streamline their operations by:

1. Better managing customer and interval data;
2. Developing better rates to integrate with Distributed Energy Resources (DER), attract customers and achieve policy and financial goals;
3. Operationalizing these rates and energy programs quickly and operating daily billing operations more accurately;
4. Forecasting energy load and settling wholesale energy transactions more accurately;
5. Targeting customers with compelling and cost effective rates and energy programs;
6. Providing better customer service through both self-serve channels and call centers by answering customers’ bill and rate related questions more effectively;

Jian Zhang, Ph.D.
CEO
GridX, Inc.
1525 McCarthy Blvd, Suite 1106
Milpitas, CA 95035
Jian.Zhang@GridX.com
Tel: (408) 807-9069
(7) Better analyzing and optimizing financials data, including revenues and margins, leading to reduced operating risks;

Our customers are leading CCA and incumbent utility companies including Monterey Bay Community Power (275,000 customers), PG&E (5M customers), APS (1.5M customers), SMUD (600K customers), and another southern California utility with close to 5M accounts. For these clients we manage every interval of every one of their customers’ meter and billing data. We encourage you to check with our clients for references.

We are interested in participating in a CPA Phase 3 RFP. We will offer our substantially more scalable technology, a broader set of tools and services, and do so at a substantially more competitive price. We will also absorb any breakup fees imposed by the current provider.

Clean Power Alliance has the opportunity to revolutionize the community energy movement in both scope and scale. At full enrollment, it is going to be the third largest “utility” in California. It will require a suite of big data billing, settlement and data management applications to support DER, customer engagement, customer services and more efficient energy procurement operations. GridX is the only vendor that has been proven by utilities at your scale, with the necessary accuracy and capabilities. We are interested in becoming your partner in this revolution.

Sincerely,

By: Jian Zhang
Chief Executive Officer
GridX, Inc.
### Fact-Check of the Staff Recommendations

<table>
<thead>
<tr>
<th>Staff Claims</th>
<th>Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risky to change vendors at this juncture.</td>
<td><strong>GridX is the only vendor who has scalability to manage interval data volume for a million customers.</strong> Three utilities, each with more than a million customers, have chosen GridX to manage their customers' data through either competitive RFP's.</td>
</tr>
<tr>
<td>New provider has little time to prepare.</td>
<td><strong>Timing is within CPA Board's control.</strong> There is enough time to “get it right”. A new provider could be ready for Phase 3.</td>
</tr>
<tr>
<td>Customers confusion and frustration. Duplicate web sites.</td>
<td><strong>If a change is made between phases, only the roughly 136,000 Phase 1 &amp; 2 customers (13% of total CPA accounts) will have been potentially exposed to a previous phone number and web address.</strong></td>
</tr>
</tbody>
</table>
| CPA can immediately begin planning for implementation of DER services. | **Current market participants, including GridX, offer significantly greater DER data services. These services include:**  
  - **Rate Design tools** to help CPA build and analyze Rates and Programs (including those that incentivize the DER adoption);  
  - **Rate Marketing tools** to help CPA identify, and market to, customers that are the best candidates for both CPA Programs and DER adoption;  
  - **CSR Rate Analysis tools** to allow customer service reps to answer complex rate questions in real-time. These questions include the impact of new DER resources on the customer’s bills. |
| Calpine's prior inability to service DER was due to limitations in PG&E’s infrastructure. | **PG&E has been providing interval data for CCA’s since 2014 through its Share-My-Data platform and through batch data files (called Item 17).** |
| Limited number of highly-experienced data management vendors – a second RFP is unlikely to yield different results. | **The following vendors have won the following competitive data management RFP’s over Calpine:**  
  - GridX won Monterey Bay Community Power (MBCP) RFP in (2017);  
  - GridX won East Bay Community Energy (EBCE) in (2017);  
  - EDMS won King City RFP (2017). |
| The current Calpine contract is the result of a comprehensive RFP. | **The previous RFP is only limited to bidders pre-qualified in a 2016 RFI.** |
| Calpine Early Termination Fee and Pricing | **GridX is committed to absorb the Early Termination Fees and as well as offer better pricing.** CPA will benefit from better technology and more complete set of services and save cost through a competitive RFP. |
| Calpine is currently providing demand response program services for Sonoma Clean Power under the GridSavvy platform. | **Sonoma Clean Power’s Demand Response Program Services is Provided by Olivine,** which has developed the program, implemented DR contracts, processed the data and calculated the participation credits for customer participants. |
SPECIAL MEETING of the Board of Directors of the
Los Angeles Community Choice Energy Authority (dba Clean Power Alliance of
Southern California)

Tuesday, March 6, 2018, 12:30pm
Los Angeles County Hall of Administration
Room 864
500 West Temple Street, Los Angeles, CA 90012

ACTION MINUTES

I. WELCOME AND ROLL CALL

Chair Mahmud called the meeting to order at 12:32pm

Secretary Gomez conducted roll call.

<table>
<thead>
<tr>
<th>Roll Call</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agoura Hills</td>
</tr>
<tr>
<td>2 Alhambra</td>
</tr>
<tr>
<td>3 Arcadia</td>
</tr>
<tr>
<td>4 Beverly Hills</td>
</tr>
<tr>
<td>5 Calabasas</td>
</tr>
<tr>
<td>6 Camarillo</td>
</tr>
<tr>
<td>7 Carson</td>
</tr>
<tr>
<td>8 Claremont</td>
</tr>
<tr>
<td>9 Culver City</td>
</tr>
<tr>
<td>10 Downey</td>
</tr>
<tr>
<td>11 Hawaiian Gardens</td>
</tr>
<tr>
<td>12 Hawthorne</td>
</tr>
<tr>
<td>13 Los Angeles County</td>
</tr>
<tr>
<td>14 Malibu</td>
</tr>
<tr>
<td>15 Manhattan Beach</td>
</tr>
</tbody>
</table>
A quorum was established.

II. PUBLIC COMMENT

No members of the public requested to address the Board on items not on the agenda.

At the recommendation of staff Chair Mahmud exercised her prerogative to hear the regular agenda item out of order, prior to closed session.

III. REGULAR AGENDA

1. Adopt Policy #001 Regarding Closed Session Communications

In discussion, the following revision was suggested to the policy language specifying to which individuals the Board Director may disclose closed session information:

2) Staff members and/or alternates of the Board Director’s local agency may also be present for its closed session discussion as
may be determined necessary and appropriate by local agency legal counsel in accordance with the Brown Act.

Director Christian Horvath moved to adopt the Policy #001 with the revised language. Seconded by Director Zuckerman. The motion passed unanimously by roll call vote.

IV. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
   Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1)

   The Board entered closed session. No action was taken on the closed session item.

V. STAFF AND BOARD ANNOUNCEMENTS

   No announcements were made.

VI. ADJOURN

   The meeting was adjourned at 1:47pm.
SPECIAL MEETING of the Board of Directors of the
Los Angeles Community Choice Energy Authority (dba Clean Power Alliance of
Southern California)

Wednesday, March 21, 2018, 3:00pm
Los Angeles County Hall of Administration
Room 830
500 West Temple Street, Los Angeles, CA 90012

ACTION MINUTES

I. WELCOME AND ROLL CALL

Chair Mahmud called the meeting to order at 3:02pm

Secretary Gomez conducted roll call.

<table>
<thead>
<tr>
<th>Roll Call</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agoura Hills</td>
<td>Harry Schwarz</td>
</tr>
<tr>
<td>Alhambra</td>
<td>Jeff Maloney</td>
</tr>
<tr>
<td>Arcadia</td>
<td>Sho Tay</td>
</tr>
<tr>
<td>Beverly Hills</td>
<td>Julian Gold</td>
</tr>
<tr>
<td>Calabasas</td>
<td>John Bingham</td>
</tr>
<tr>
<td>Camarillo</td>
<td>Tony Trembley</td>
</tr>
<tr>
<td>Carson</td>
<td>Jawane Hilton</td>
</tr>
<tr>
<td>Claremont</td>
<td>Roger Bradley</td>
</tr>
<tr>
<td>Culver City</td>
<td>Meghan Sahli-Wells</td>
</tr>
<tr>
<td>Downey</td>
<td>Alex Saab</td>
</tr>
<tr>
<td>Hawaiian Gardens</td>
<td>Myra Maravilla</td>
</tr>
<tr>
<td>Hawthorne</td>
<td>Angie Reyes English</td>
</tr>
<tr>
<td>Los Angeles County</td>
<td>Gary Gero</td>
</tr>
<tr>
<td>Malibu</td>
<td>Craig George</td>
</tr>
<tr>
<td>Manhattan Beach</td>
<td>Amy Howorth</td>
</tr>
<tr>
<td>Moorpark</td>
<td>Janice Parvin</td>
</tr>
</tbody>
</table>
A quorum was established.

II. PUBLIC COMMENT

Harvey Eder, Public Solar Power Coalition

III. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1)

The Board entered closed session. No action was taken on the closed session item.

IV. REGULAR AGENDA

1. Items for Approval
   A. Authorize the Executive Director to execute an agreement with Calpine Energy Solutions for Scope of Work #2
Director Zuckerman moved to approve the item as recommended by staff. Vice Chair Kuehl seconded.

Director Parks suggested to amend the motion to include the ability for member agencies’ legal counsel to suggest non-substantive changes to the contract. The maker of the motion and second accepted the amendment. The motion passed by roll call vote with City of Ventura abstaining.

V. CHAIR ANNOUNCEMENTS

Chair Mahmud gave announcements.

VI. STAFF AND BOARD ANNOUNCEMENTS

Announcements made by Executive Director Ted Bardacke as well as Director English of Hawthorne and Vice Chair Kuehl of Los Angeles County.

VII. ADJOURN

The meeting was adjourned at 5:02pm.
RECOMMENDATION:

It is recommended that the Board appoint Jacquelyn Betha as Secretary of the Board effective April 6, 2018.

BACKGROUND AND DISCUSSION:

Pursuant to section 5.2 of the Joint Powers Authority (JPA) Agreement, the Board shall appoint a Secretary to keep official minutes of CPA Board meetings and to be responsible for the maintenance of all official CPA records and documents.

Staff recommends appointing the Jacquelyn Betha in this role beginning after the April 5, 2018 meeting of the Board. Ms. Betha currently serves as the Executive Assistant to CPA Executive Director Ted Bardacke and is well qualified to serve in this capacity.
To: Clean Power Alliance of Southern California Board of Directors

From: CPA Staff

Item 5: Approval of Amendment Number 2 to the Los Angeles Community Choice Energy Authority Joint Powers Agreement

Date: April 5, 2018

RECOMMENDATION

1. Authorize Chair to execute Amendment Number 2 to the Joint Powers Agreement (Agreement) that would change the name of the Joint Powers Authority from "Los Angeles Community Choice Energy Authority" to "Clean Power Alliance of Southern California".

2. Authorize the Executive Director, or designee, to execute amendments to all current contracts and agreements of the Los Angeles Community Choice Energy Authority to change the name to “Clean Power Alliance of Southern California”.

BACKGROUND

On February 1, 2018, the Board of Directors ("Board") voted and approved the name change of the Authority from "Los Angeles Community Choice Energy Authority" to "Clean Power Alliance of Southern California". On March 1, 2018, pursuant to section 4.11.1, subdivision (d), of the Agreement, staff provided the Board thirty (30) days advanced notice of the intent to amend the Agreement. This Amendment No. 2 reflects the name “Clean Power Alliance of Southern California.”

This staff report also authorizes the Executive Director to amend all current contracts and agreements of the LACCE Authority to reflect its new name of “Clean Power Alliance of Southern California.”

Attachment: JPA Amendment No. 2
AMENDMENT NUMBER TWO TO
THE LOS ANGELES COMMUNITY CHOICE ENERGY AUTHORITY
JOINT POWERS AGREEMENT

This Amendment Number Two to Joint Powers Agreement for the Los Angeles Community Choice Energy Authority (this "Amendment") is made and entered into by and between those certain public agencies, hereinafter designated individually as the "Member Agency," which have duly executed, pursuant to resolution or ordinance, the Joint Powers Agreement for the Los Angeles Community Choice Energy Authority, (the "Agreement"), as follows:

RECITALS

1. The Los Angeles Community Choice Energy Authority ("Authority") Agreement was executed on June 27, 2017 between the County and the City of Rolling Hills Estates in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

2. Each of the Member Agencies presently has a representative on the Board of Directors of the Los Angeles Community Choice Energy Authority ("Authority").

On December 7, 2017, the Authority's Board of Directors ("Board") voted and approved Amendment Number One to the Agreement which made explicit the Authority's obligation to use its best efforts to sell a member's pro rata share of energy and obligation of the departing member to pay any marginal difference between the purchase and sale price for such power, if any.

3. On February 1, 2018, the Authority's Board voted and approved the name change of the Authority to now be the Clean Power Alliance of Southern California.

4. The Members Agencies have determined to amend the Agreement to change the name of the Authority "Clean Power Alliance of Southern California".

5. The Agreement may be amended in the manner set forth in 4.11.

NOW THEREFORE, it is mutually agreed by and between the parties hereto to amend the Joint Powers Agreement

1. Amendment of Agreement to Change the Name. The Agreement is hereby amended to change the name of the Authority to "Clean Power Alliance of Southern California" and all references to "Los Angeles Community Choice Energy Authority" or "LACCE", such as set out in the title to the Agreement, in Section 2.2 (Formation of the Authority) and in all other places in the Agreement, shall be changed to "Clean Power Alliance of Southern California."

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect.
IN WITNESS WHEREOF, the parties hereto have caused this Amendment Two to be executed as of the date first above written.

IN WITNESS WHEREOF, the Chair of the Clean Power Alliance of the Southern California, authorized by the Board on April 5, 2018, has executed this Amendment Number Two of the Joint Powers Agreement on behalf of the Authority.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By _____________________________________________  Date____________

Chair

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____________________________________________

Senior Deputy County Counsel
To: Clean Power Alliance Board of Directors

From: CPA Staff

Item 6: Adoption of Employee Benefits Policy

Date: April 5, 2018

RECOMMENDATION

It is recommended that the CPA Board adopt the employee benefits package for vacation, sick leave, retirement and health care outlined in Attachment 1.

BACKGROUND

In March, CPA Executive Director Ted Bardacke presented an employee benefits proposal to the Ad Hoc Committee on Personnel & Operating Policies & Procedures for consideration and discussion. The proposed policies for vacation, sick leave, retirement, and health care attempted to balance the objectives of recruiting and retaining top talent to CPA while limiting long-term liabilities and cost uncertainty, particularly with regard to retirement benefits.

It is important to establish these policies prior to extending job offers, which the Executive Director intends to do throughout the month of April and beyond.

After conferring, the Ad Hoc Committee and CPA staff jointly arrived at the proposed policies being presented to the Board for approval.

DISCUSSION

VACATION, SICK, HOLIDAY
Vacation, Sick and Holiday policy is a combination of those adopted by many public agencies throughout Southern California with some modifications widely used in the private sector, including three weeks of vacation per year (with no cash out allowed), one day of paid sick leave per month, and official State/Federal holidays. Additionally, CPA offices will “go dark” during the last week of December and employees will be allowed to complete essential duties remotely with no charge to their vacation time.

HEALTH
The benchmark minimum health care contribution be a Kaiser Plan for individual employees offered at no cost. Higher cost plans (PPO and/or other HMO) will be offered...
as well, with the employee contributing to any cost difference. Spouse and dependent coverage will also be offered at an additional cost. A cash-out option for those who have health care provided elsewhere (i.e., through a spouse) will be offered.

It is important to offer a high-quality no-cost plan to employees. At the same time, benchmarking against Kaiser, a leader in health care cost containment, puts an acceptable limit on future health care cost increases.

**RETIREMENT**

Employees will be offered a defined contribution plan (i.e. 401(k) type), not a defined benefits plan such as CalPERS. A defined contribution plan will limit CPA’s long-term liability and exposure to changes in benefits formulas outside of its control. Defined contribution plans are the standard among other CCAs that operate as JPAs. The CCAs that do offer defined benefits plans are those that are single-city CCAs that operate as de facto city departments.

Matching contribution levels will be 100% of the first 1% of employee salary and 50% of 2% to 6% of employee salary, for a maximum total of 3.5% match.

These matching contribution levels are the lower end of the scale of other CCAs – Marin Clean Energy contributes 10% of an employee salary for example. However, these benefit levels conform to IRS Safe Harbor regulations, which significantly limits the complexity of IRS reporting and compliance, thus reducing plan administration costs to CPA. It also has the virtue of providing benefit equity across all employees.

As CPA grows it may be necessary to revisit these contribution levels to retain top employees; however, it is sufficient for our current recruitment efforts.

**PAYROLL AND BENEFITS SERVICES**

CPA initially contracted with ADP to provide a payroll and benefits services. However, the Ad Hoc Committee and staff believe that it is important to explore other options to seek the best value and service for CPA. Interim CFO John Zeller will lead a competitive selection process for these services, in collaboration with the Ad Hoc Committee.
EMPLOYEE BENEFITS POLICY

VACATION, SICK, HOLIDAY

- **Vacation.** EMPLOYEE will accrue vacation leave at the rate of 120 hours (3 weeks) annually, prorated and credited each pay period. EMPLOYEE may accrue vacation to a limit of 1.5 times the annual accrual. Once EMPLOYEE reaches the maximum accrual limit EMPLOYEE will not accrue any additional vacation time until the accrued balance falls below the maximum limit.

- **Sick Leave.** EMPLOYEE shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

- **Holiday Leave.** EMPLOYEE shall be entitled to the following paid holidays: New Year’s Day, Martin Luther King Jr.’s Birthday, Presidents’ Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Indigenous People’s (previously Columbus) Day, Veteran’s Day, Thanksgiving, Friday after Thanksgiving, Christmas Day Additionally, CPA offices will be closed during the last week of December; employees are allowed to complete essential duties remotely with no charge to their vacation time.

HEALTH

Employees are offered an individual Kaiser Plan at no cost. Employees who select a higher cost option, either PPO or other HMO, or for coverage of a spouse or dependents cover the cost difference. Cash-out options for those who have health care provided elsewhere (i.e. through a spouse) are available upon proof of coverage similar to that offered by CPA.

RETIREMENT

EMPLOYEE will be enrolled automatically in a 401(k) type program after three months of employment unless they choose to opt-out. EMPLOYEE is eligible for ongoing employer matching contributions of 100% of the first 1% of EMPLOYEE salary and 50% of 2% to 6% of EMPLOYEE salary, for a maximum total of 3.5% match.
To: Clean Power Alliance of Southern California Board of Directors

From: CPA Staff

Item 7: Adopt Resolution No. 18-004 Stating the Initial Participants of the Clean Power Alliance of Southern California

Date: April 5, 2018

RECOMMENDATION

Approve Resolution No. 18-004 (Attachment 1) stating the members that are determined to be the “Initial Participants” of the CPA pursuant to the Joint Powers Authority (JPA) Agreement.

BACKGROUND

Pursuant to Section 2.5 of the executed JPA Agreement, Initial Participants are defined as those members that executed the Agreement and passed an Ordinance pursuant to Public Utilities Code section 366.2(c)(12) within a 180 days of formation of the CPA, formerly known as the Los Angeles Community Choice Energy Authority. On December 7, 2017, due to the wildfires affecting areas in Los Angeles and Ventura County, the Board authorized a 90-day grace period extension for affected cities allowing members to take such necessary actions by March 27, 2018. On January 17, 2018, the Board also authorized the City of Redondo Beach the opportunity to join the CPA as an “Initial Participant”. The attached Resolution approves the 31 members that have joined since the inception of the LACCE Authority, now known as CPA.

The member counties and cities are the following: County of Los Angeles and County of Ventura, and the cities of Agoura Hills, Alhambra, Arcadia, Beverly Hills, Calabasas, Camarillo, Carson, Claremont, Culver City, Downey, Hawaiian Gardens, Hawthorne, Malibu, Manhattan Beach, Moorpark, Ojai, Oxnard, Paramount, Redondo, Rolling Hills Estates, Santa Monica, Sierra Madre, Simi Valley, South Pasadena, Temple City, Thousand Oaks, Ventura, West Hollywood, and Whittier.

Any subsequent members of CPA must comply with the terms of the JPA agreement and the New Entrants Policy as adopted by the Board on December 7, 2017. These provisions include:
• CPA allows for the entrance of new members to CPA if it is determined that doing so is in the best economic interests of CPA and its ratepayers, but that delays such entrance if it is not;

• Considers each new entrant’s impact on CPA’s financial condition on a case-by-case basis and seeks initial (and reimbursable) funding from new entrants if CPA anticipates it will be unable to manage the new entrant’s entry in a way that is protective of CPA’s financial position and cash flow requirements;

• Consolidates the entry of new members such that amendment of the Implementation Plan only occurs twice a year to provide certainty and efficiency in their incorporation into the CPA program:

• The CPA Board of Directors must adopt a resolution approving the member to join CPA;

• The new member’s governing board must adopt a resolution authorizing membership into the CPA and establishing its pro rata share of organizational, planning and other pre-existing expenditures, if any, and describing additional conditions associated with membership, if any;

• The new member’s governing board must adopt an ordinance pursuant to Public Utilities Code section 366.2(c)(12) and any other necessary program agreements by the public agency;

• Payment of the membership payment, if any; and

• Satisfaction of any reasonable conditions established by the CPA Board.

Additionally, any new members will be subject to California Public Utilities Commission (CPUC) Resolution E-4097 as adopted on February 8, 2018 governing the time frame in which the new member may begin receiving electric service under the program which is typically the second January after the date that they join (e.g., if join in 2018, service will start in January 2020).
RESOLUTION NO. 18-004

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA STATING FORTH THE INITIAL PARTICIPANTS PURSUANT TO ITS JOINT POWERS AGREEMENT

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) (“Clean Power Alliance” or “CPA”) was formed on June 27, 2017;

WHEREAS, the Joint Powers Agreement (“Agreement”) specifies the Initial Participants are those members that executed the Agreement and passed an Ordinance pursuant to Public Utilities Code section 366.2(c)(12) within a 180 days of formation of the CPA, formerly known as the Los Angeles Community Choice Energy Authority;

WHEREAS, on December 7, 2017, due to the wildfires affecting areas in Los Angeles and Ventura County, the Board authorized a grace period extension for those affected members to take such necessary actions before March 27, 2018.

WHEREAS, on January 17, 2018, the Board also authorized the City of Redondo Beach the opportunity to join the CPA as an “Initial Participant”.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA:

1. The following members are determined to be “Initial Participants” of the Clean Power Alliance: County of Los Angeles and County of Ventura, and the cities of Agoura Hills, Alhambra, Arcadia, Beverly Hills, Calabasas, Camarillo, Carson, Claremont, Culver City, Downey, Hawaiian Gardens, Hawthorne, Malibu, Manhattan Beach, Moorpark, Ojai, Oxnard, Paramount, Redondo, Rolling Hills Estates, Santa Monica, Sierra Madre, Simi Valley, South Pasadena, Temple City, Thousand Oaks, Ventura, West Hollywood, and Whittier.

ADOPTED AND APPROVED this ____ day of __________ 2018.

________________________________________
Chair

ATTEST:

____________________________
Secretary
To:   Clean Power Alliance Board of Directors

From:   CPA Staff

Item 8:   Election of At-Large Representatives to the Executive Committee

Date:   April 5, 2018

At the March 1, 2018 meeting of the CPA Board, the Board approved the establishment of committees and agreed on a structure for the Executive Committee. The Board determined that the Executive Committee would be comprised of nine members as follows:

1. Board Chair (Diana Mahmud, South Pasadena)
2. First Vice Chair (Sheila Kuehl, Los Angeles County)
3. Chair of the Finance Committee (Julian Gold, Beverly Hills)
4. Chair of the Legislative and Regulatory Committee (Lindsey Horvath, West Hollywood)
5. Chair of the Energy Planning and Resources Committee (Carmen Ramirez, Oxnard)
6. At-Large (from within LA County, also serves as Second Vice Chair when First Vice Chair is from Ventura County)
7. At-Large (from within LA County)
8. At-Large (from within Ventura County, also serves as Second Vice Chair when First Vice Chair is from LA County)
9. Previous Board Chair (after the first year)

The Board also agreed to open a nomination period for the nomination of candidates to serve in the At-Large seats on the Executive Committee. That nomination period closed on March 26, 2018 and 5 nominations were received for representatives from Los Angeles and two nominations for representatives from Ventura. Ballots were delivered to all Board directors on March 28, 2018 and were requested to be returned to the Board Secretary before the April 5, 2018 meeting.
In accordance with the Brown Act, the ballots themselves may be anonymous but they must be tallied in a public session of the Board and made available to the public for inspection. Therefore, the collected ballots will be opened and tallied during the Board’s consideration of this item. The top two vote-getters in Los Angeles will be elected to Executive Committee and the top vote-getter in Ventura will be elected.

In the case of a tie for the Ventura representative, a roll call vote will be held among the Ventura delegates to choose among the two candidates. If there is still a tie after the roll call vote, a second roll call vote will be held and this process would continue until there is a winner.

In the case of a tie for the second Los Angeles representative, a roll call vote will be held among the Los Angeles delegates to choose among the two candidates (if a tie for first representative, then both are elected). If there is still a tie after the roll call vote, a second roll call vote will be held and this would continue until there is a winner.
To: Clean Power Alliance Board of Directors

From: CPA Staff

Item 9: Adopt Resolution No. 18-005 to Provide Delegation of Authority to the Executive Director to Enter into Agreements for Energy Procurement

Date: April 5, 2018

RECOMMENDATION

It is recommended that the CPA Board adopt Resolution No. 18-005 that delegates authority to the Executive Director to execute the necessary documents to implement power procurement via bids under the current Request for Offers (RFO), including:

- Edison Electric Institute (EEI) Master Agreement
- EEI Confirmation Agreement
- Security Agreement
- Inter-creditor and Collateral Agreement
- Account Control Agreement

The resolution further authorizes the Executive Director to execute Bilateral Transactions for any 2018 power resources not obtained under the current RFO.

Additionally, the resolution authorizes the Executive Director, subject to the approval of the CPA Executive Committee, to execute Bilateral Transactions for renewable energy, energy storage and/or capacity projects in Southern California of 25MW or less.

BACKGROUND

At the January 17, 2018 meeting of the Board, the Board approved a power procurement process for Phase 2 that is a more cost effective and sophisticated than the process used in Phase 1. The Phase 1 process consisted of the solicitation of power proposals on a single price “bundled” basis for all power needs. The Phase 2 process utilizes a “portfolio manager” approach that unbundles the power supply into eight different component
products and solicits offers on each of those products. This allows CPA to assure that it is procuring each of the component pieces at the lowest available cost.

On March 20, 2018, The Energy Authority (TEA), acting as the portfolio manager on behalf of CPA issued a Request for Offers (RFO) for energy products starting in June 2018. On March 28, 2018, the CPA Energy Committee, along with the Chair of the CPA Finance Committee reviewed the staff recommendations for energy products. No formal recommendation was requested or action taken but there was consensus that the staff recommendations were reasonable, subject to some conditions that are now contained in the proposal to the full Board.

DISCUSSION

POWER PROCUREMENT PROCESS

Program Goals: The initial step in the procurement process was to develop Phase 2 Procurement Goals as follows:

- Secure 2018 power supply at known and reasonable costs through an open and competitive process.
- Meet the initial and basic CPA program objectives of
  1. Successfully procuring sufficient renewables to support the needs of the customers choosing 36%, 50% or 100% renewables in their supply,
  2. Purchasing, to the maximum extent practical, carbon-free supplies, and
  3. Encouraging the use of local resources where possible.
- Begin purchases for 2019 and 2020 to build a diversified portfolio which is critical to maintaining rate stability.
- Enable rate setting for Phase 2 customers.
- Plan for the unprecedented CPA program expansion in 2019 by establishing the contractual infrastructure and supplier relationships necessary to implement power procurement for the future.

Solicitation Steps: As noted above, an RFO was released on March 20, 2018 that requested offers for four main categories of unbundled power products as follows:

- Renewable Energy (both in-state renewables or PPC1 and out-of-state renewables or PCC2)
- Carbon-Free Energy (primarily large hydro)
- Fixed-Price Energy, and
- Resource Adequacy Capacity (System, Local and Flex).

CPA received a total of 18 responses and the indicative prices and volumes were generally consistent with staff expectations. TEA and staff reviewed the offers and created a short-list of recommended products/suppliers based on the following criteria:
• Price
• Environmental impact of proposed energy products
• Preference for energy delivered from resources located (in descending order) Los Angeles or Ventura County, Southern California outside of Los Angeles and Ventura County and the last preference is California
• Supplier acceptance of CPA’s standard contracting terms
• Supplier creditworthiness
• Supplier track record of providing similar products

CPA’s technical consultants then used the pricing information from the short-listed products to update our financial models and inform the rate setting process.

IMPLEMENTATION AGREEMENTS

At today’s Board meeting, staff is seeking delegation of authority to execute a number of standard utility industry agreements (e.g., Master Agreement, Confirmations, and Lockbox Documents) so that CPA can secure these resources within the next several days so that we can have power deliveries for the June 2018 launch of Phase 2 of the program.

Within this delegation of authority is the option to purchase some power for 2019 and 2020 so that CPA can start building a diversified energy portfolio and ensure rate stability and power supply for our new phased-in customers.

To execute these power contracts, CPA is using standard industry agreements modified for CPA’s particular circumstances and CCA status. These include:

• **EEI Master Agreement** is the enabling agreement between CPA and a supplier that establishes standard terms and conditions for Transactions. The EEI Master is a template and not itself a commitment to buy or sell energy or related products.

• **EEI Confirmation** is used for the individual purchases of energy or related products entered into under a confirmation, which once signed by both parties becomes a binding “Transaction”. For some shorter term Resource Adequacy needs, CPA may use a similar standard WSPP RA Confirmation Agreement

**Lockbox Agreements**

Because CPA lacks a credit rating, suppliers will require that transactions be supported by cash deposits, letters of credit, or guarantees from a City or County. Each of these arrangements put rate-payer or tax-payer funds at risk. Therefore, CPA is pursuing a
lockbox-type arrangement as described below to assure suppliers that adequate funds are available in CPA accounts to pay for the power that has been delivered to CPA.

In this type of arrangement, CPA will make an initial deposit into a lockbox account from a combination of County and River City bank credit line funds. Revenues collected by SCE on CPA’s behalf will then be deposited into this lockbox account administered by the collateral agent River City Bank. Suppliers will be paid for energy deliveries from that account. Surplus funds are then forwarded by River City Bank to CPA. In order to set up and administer the Lockbox arrangement, execution of the following documents will be needed:

- **Account Control Agreement**
  Between River City Bank and CPA allows River City Bank to receive all the revenues from SCE, place it into the lockbox and disperse it first to the Suppliers and then to CPA.

- **Security Agreement**
  Between CPA and River City Bank establishes the bank as the “Collateral Agent” for CPA wherein CPA pledges first payments will go to Suppliers as Secured Creditors.

- **Inter-creditor & Collateral Agency Agreement**
  Between River City Bank, CPA and PPA Providers for the Suppliers to name River City Bank to act as Collateral Agent acting on their behalf regarding the administration and disbursement from the lockbox.

**PROCUREMENT PROCESS**

**Delegation of Authority**

Unlike Request for Proposals (RFPs) for long-term power procurement, power suppliers will honor prices for a limited period of time through a market solicitation. Energy buyers need to be able to review, approve and execute confirmations for transactions within a very short time frame, sometimes as little as 1 to 2 hours. The current schedule calls for a meeting of CPA staff and energy sellers during the second week of April to receive final binding prices (versus what have been called as “indicative prices”) where winning final bids will be accepted by CPA and the confirmations for transactions will be executed.

To be able to make the types of transactions necessary for CPA to operate, certain delegations of authority are required versus having the need for frequent Board meetings to gain approvals. All California JPA-based CCAs have delegated some authority to the CEO/Executive Director to enter market transactions, always subject to some conditions.
Based on market conditions and best practices by other CCAs, staff is proposing that the Executive Director be authorized to:

- Enter into EEI Master Agreements under the current RFO in substantially the same form presented to the Board in Attachment 1.
- Enter into Security Agreements under the current RFO in substantially the same form presented to the Board in Attachment 2.
- Enter into transactions under the current RFO for:
  - Up to 100% of 2018 estimated requirements (approximately 225MW capacity)
  - Up to 50% of 2019 estimated requirements (approximately 550MW capacity), subject to lockbox deposit limits outlined below
  - Up to 25% of 2020 estimated requirements (approximately 300MW capacity), subject to lockbox deposit limits outlined below
  - No contract will extend beyond the end of 2020
- Enter into transactions through bilateral negotiations for any remaining requirements for 2018 not obtained under the current RFO.
- Enter into transactions, subject to the approval of the Executive Committee, for renewable energy, energy storage and/or capacity projects in Southern California of 25MW or less.

RISK MANAGEMENT AND FUTURE PROCUREMENT

Staff, attorneys and consultants are currently exploring ways that are both logistically feasible and legally possible to give the Executive Committee, of a subset of Board members, additional visibility and oversight of the transactions that will be entered into under this proposed delegation of authority.

In addition, the standard lockbox security agreement ultimately negotiated with suppliers is expected to have lockbox deposit limits, which step up over time as more customers are transitioned. This ensures that reserve amounts will step up only as load (and therefore revenue) increases, rather than all at once. This will give CPA additional flexibility for fine-tuning 2019 phasing implementation.

Furthermore, no transactions will be entered into until Los Angeles County formally extends its loan repayment date to June 30, 2019. That extension will be considered by the Los Angeles County Board of Supervisors on April 10.

These measures are interim steps that build towards a more formal risk management procedure that will be developed this summer and be in place before CPA issues a new RFO. It is anticipated that this risk management strategy will be a combination of rules-based procedures for staff and procedural steps for Board oversight.
RESOLUTION NO. 18-006

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR TO ENTER INTO CERTAIN EEI MASTER AGREEMENTS, CONFIRMATION AGREEMENTS, LOCKBOX AGREEMENTS WITH RIVER CITY BANK, AND OTHER TRANSACTIONS.

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California ("Clean Power Alliance" or "CPA") was formed on June 27, 2017 as the Los Angeles Community Choice Energy Authority pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Southern California;

WHEREAS, the launch of Phase 2 service of the community choice aggregation program for 30,000 non-residential customers in the unincorporated areas of Los Angeles County and the cities of Rolling Hills Estates and South Pasadena is planned for June 2018;

WHEREAS, Clean Power Alliance administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, capacity and related products and services (the "Product") from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, Clean Power Alliance has identified several energy service providers (each, an “Energy Service Provider” or “ESP”) as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, Clean Power Alliance will be negotiating a separate EEI Master Power Purchase and Sale Agreement (the “Master Agreements”) with such Energy Service Providers;

WHEREAS, the Master Agreements are an industry standard framework agreement between an energy purchaser and an energy supplier that establishes certain terms and conditions for an ongoing contractual relationship between an energy purchaser and energy supplier, but which do not require a purchaser to purchase or a supplier to supply the Product without executing a separate written agreement in the form of a Confirmation Agreement (defined below);

WHEREAS, a confirmation agreement is an agreement between an energy purchaser and an energy supplier (e.g., an ESP) that binds the energy purchaser and the energy supplier to supply specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of an enabling agreement such as the Master Agreement or the WSPP Agreement ("Confirmation Agreement");
WHEREAS, Clean Power Alliance will be negotiating a form of Confirmation Agreement with each of the ESPs;

WHEREAS, once a Confirmation Agreement is executed by Clean Power Alliance and an ESP, it is a “Transaction”;

WHEREAS, Clean Power Alliance has agreed to provide a “multi-party lockbox” into which Clean Power Alliance customer payments will be deposited, as security for the power purchase obligations of Clean Power Alliance under the Master Agreement and Confirmation Agreement;

WHEREAS, certain of the ESPs have elected to participate in the multi-party lockbox;

WHEREAS, River City Bank was selected to administer, and act as collateral agent for the ESPs with respect to, the multi-party lockbox;

WHEREAS, three agreements with River City Bank are necessary to establish the “multi-party lockbox”: an Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Control Agreement (collectively, the “Lockbox Agreements”) and forms of these three agreements will be negotiated with participating ESPs as well as River City Bank and are intended to be entered into no later than the time that Clean Power Alliance enters into the Confirmation Agreements with the ESPs that are participating in the multi-party lockbox;

WHEREAS, the Board wishes to delegate to the Executive Director authority to negotiate and execute the Master Agreements and the Lockbox Agreements for the reasons provided above;

WHEREAS, because of the timing of the execution of the various agreements, it is infeasible to bring such agreements back to the Board prior to execution, the Board also wishes to delegate to the Executive Director the authority to approve any non-material changes, additions, variations or deletions (“Changes”) to the form of Master Agreements and Lockbox Agreements presented to the Board in connection with this resolution;

WHEREAS, the Board wishes to delegate to the Executive Director the authority to enter into (a) under the current Request for Offers (“RFO”), Transactions for up to one hundred percent of 2018 estimated requirements, fifty percent of 2019 estimated requirements, and twenty-five percent of 2020 requirements and (b) after the current RFO, Transactions through bilateral negotiations for any remaining requirements for 2018 not obtained under the current RFO; provided, however, that the foregoing Transactions shall be entered into pursuant to Confirmation Agreements in substantially the same form presented to the Board, subject to Changes deemed by the Executive Director to be reasonable, necessary and appropriate;

WHEREAS, the Board wishes to delegate to the Executive Director the authority to enter into any other agreements for energy, renewable energy, energy storage and/or
capacity for projects of 25 MW or less that are located in Southern California, with such agreements being subject to the approval of the Executive Committee;

WHEREAS, the Board wishes to delegate to the Executive Director the authority to enter into EEI Master Agreements from time to time, in substantially the same form as previously presented to the Board, subject to Changes deemed by the Executive Director to be reasonable, necessary and appropriate;

WHEREAS, the Executive Director is authorized to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of CPA’s obligations under, the foregoing agreements (including any other instruments, documents, certificates and agreements executed by CPA in connection therewith) in order to implement the Executive Director’s authority to enter into such approved agreements and Transactions; and

WHEREAS, the Board has determined that a Notice of Exemption under California Environmental Quality Act (“CEQA”) should be filed.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Executive Director in the name and on behalf of Clean Power Alliance to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of Clean Power Alliance’s obligations under, the aforementioned Master Agreements and Lockbox Agreements in substantially the same form as presented to the Board, (including any other instruments, documents, certificates and agreements executed by Clean Power Alliance in connection therewith, including the opening of bank, escrow or other similar accounts) and, in each case, subject to such Changes as the Executive Director may deem necessary or appropriate, with the execution and delivery of the aforementioned Agreements containing any such Changes by the Executive Director to be conclusive evidence of the Executive Director’s approval of such Changes;

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Board delegates authority to the Executive Director in the name and on behalf of Clean Power Alliance to enter into (a) Transactions under the current RFO for up to one hundred percent of 2018 estimated requirements, fifty percent of 2019 estimated requirements, and twenty-five percent of 2020 requirements and (b) after the current RFO, Transactions through bilateral negotiations for any remaining requirements for 2018 not obtained under the current RFO; provided, however, that (i) the foregoing Transactions shall be entered into pursuant to Confirmations Agreements in substantially the same form presented to the Board, subject to Changes deemed by the Executive Director to be reasonable, necessary and appropriate, and (ii) the Executive Director’s authority to enter into the foregoing Transactions pursuant to this Resolution shall be effective through December 31, 2018;

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Board delegates authority to the Executive Director in the name and on behalf of Clean Power Alliance to enter into any other agreements for energy, renewable energy, energy storage and/or capacity for projects of 25 MW or less that are located in Southern California, with such agreements being subject to the approval of the Executive Committee;
IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Board delegates authority to the Executive Director in the name and on behalf of Clean Power Alliance to enter into EEI Master Agreements from time to time, in substantially the same form presented to the Board, subject to Changes deemed by the Executive Director to be reasonable, necessary and appropriate; and

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Board delegates authority to the Executive Director in the name and on behalf of Clean Power Alliance to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of CPA’s obligations under, the foregoing agreements (including any other instruments, documents, certificates and agreements executed by CPA in connection therewith) in order to implement the Executive Director’s authority to enter into such approved agreements and Transactions.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that:

1. The Board has determined that (i) the approval of the Confirmation Agreements are not a project under CEQA, (ii) if the approval of the Confirmation Agreements are a project under CEQA the Agreements do not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3), and (ii) if the approval of the Confirmation Agreements are a project under CEQA, the Confirmation Agreements are categorically exempt under State CEQA Guidelines Section 15308 as actions for the protection of the environment.

2. The Board delegates authority to the Executive Director to file with the Board Secretary, a Notice of Exemption under CEQA.

ADOPTED AND APPROVED this ____ day of __________ 2018.

____________________________
Chair

ATTEST:

__________________
Secretary
Master Power Purchase & Sale Agreement
# MASTER POWER PURCHASE AND SALE AGREEMENT

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>COVER SHEET</td>
<td>3</td>
</tr>
<tr>
<td>GENERAL TERMS AND CONDITIONS</td>
<td>23</td>
</tr>
<tr>
<td><strong>ARTICLE ONE:</strong> GENERAL DEFINITIONS</td>
<td>23</td>
</tr>
<tr>
<td><strong>ARTICLE TWO:</strong> TRANSACTION TERMS AND CONDITIONS</td>
<td>27</td>
</tr>
<tr>
<td>2.1 Transactions</td>
<td>27</td>
</tr>
<tr>
<td>2.2 Governing Terms</td>
<td>28</td>
</tr>
<tr>
<td>2.3 Confirmation</td>
<td>28</td>
</tr>
<tr>
<td>2.4 Additional Confirmation Terms</td>
<td>28</td>
</tr>
<tr>
<td>2.5 Recording</td>
<td>28</td>
</tr>
<tr>
<td><strong>ARTICLE THREE:</strong> OBLIGATIONS AND DELIVERIES</td>
<td>28</td>
</tr>
<tr>
<td>3.1 Seller’s and Buyer’s Obligations</td>
<td>28</td>
</tr>
<tr>
<td>3.2 Transmission and Scheduling</td>
<td>29</td>
</tr>
<tr>
<td>3.3 Force Majeure</td>
<td>29</td>
</tr>
<tr>
<td><strong>ARTICLE FOUR:</strong> REMEDIES FOR FAILURE TO DELIVER/RECEIVE</td>
<td>29</td>
</tr>
<tr>
<td>4.1 Seller Failure</td>
<td>29</td>
</tr>
<tr>
<td>4.2 Buyer Failure</td>
<td>29</td>
</tr>
<tr>
<td><strong>ARTICLE FIVE:</strong> EVENTS OF DEFAULT; REMEDIES</td>
<td>29</td>
</tr>
<tr>
<td>5.1 Events of Default</td>
<td>29</td>
</tr>
<tr>
<td>5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts</td>
<td>31</td>
</tr>
<tr>
<td>5.3 Net Out of Settlement Amounts</td>
<td>31</td>
</tr>
<tr>
<td>5.4 Notice of Payment of Termination Payment</td>
<td>31</td>
</tr>
<tr>
<td>5.5 Disputes With Respect to Termination Payment</td>
<td>31</td>
</tr>
<tr>
<td>5.6 Closeout Setoffs</td>
<td>31</td>
</tr>
<tr>
<td>5.7 Suspension of Performance</td>
<td>32</td>
</tr>
<tr>
<td><strong>ARTICLE SIX:</strong> PAYMENT AND NETTING</td>
<td>32</td>
</tr>
<tr>
<td>6.1 Billing Period</td>
<td>32</td>
</tr>
<tr>
<td>6.2 Timeliness of Payment</td>
<td>32</td>
</tr>
<tr>
<td>6.3 Disputes and Adjustments of Invoices</td>
<td>32</td>
</tr>
<tr>
<td>6.4 Netting of Payments</td>
<td>33</td>
</tr>
<tr>
<td>6.5 Payment Obligation Absent Netting</td>
<td>33</td>
</tr>
<tr>
<td>6.6 Security</td>
<td>33</td>
</tr>
<tr>
<td>6.7 Payment for Options</td>
<td>33</td>
</tr>
</tbody>
</table>

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
6.8 Transaction Netting

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection
8.2 Party B Credit Protection
8.3 Grant of Security Interest/Remedies

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation
9.2 Governmental Charges

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement
10.2 Representations and Warranties
10.3 Title and Risk of Loss
10.4 Indemnity
10.5 Assignment
10.6 Governing Law
10.7 Notices
10.8 General
10.9 Audit
10.10 Forward Contract
10.11 Confidentiality

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

EXHIBIT A: CONFIRMATION LETTER
MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement (“Master Agreement”) is made as of the following date: __________, 2018 (“Effective Date”). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

Name: (“______________” or “Party A”) Name: Clean Power Alliance of Southern California, a California joint powers authority (“CPA” or “Party B”)

All Notices:
Address: Address:
Attn: __________________________ Attn: __________________________
Phone: __________________________ Phone: __________________________
E-mail: __________________________ E-mail: __________________________
Facsimile: ______________________ Facsimile: ______________________
Duns: __________________________ Duns: __________________________
Federal Tax ID Number: __________ Federal Tax ID Number: __________

Invoices:
Attn: __________________________ Attn: __________________________
Phone: __________________________ Phone: __________________________
Facsimile: ______________________ Facsimile: ______________________
E-mail: __________________________ E-mail: __________________________

Scheduling:
Attn: __________________________ Attn: __________________________
Phone: __________________________ Phone: __________________________
Facsimile: ______________________ Facsimile: ______________________

Confirmations:
Attn: __________________________ Attn: __________________________
Address: ______________________ Address: ______________________
Phone: __________________________ Phone: __________________________
Facsimile: ______________________ Facsimile: ______________________
E-mail: __________________________ E-mail: __________________________

Payments:
Attn: __________________________ Attn: __________________________
Phone: __________________________ Phone: __________________________
Facsimile: ______________________ Facsimile: ______________________
E-mail: __________________________ E-mail: __________________________
Wire Transfer:
BNK: ____________________________
ABA: ____________________________
ACCT: ____________________________

Credit and Collections:
Attn: ____________________________
Phone: ____________________________
Facsimile: ____________________________

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: ____________________________
Phone: ____________________________
Facsimile: ____________________________

Wire Transfer:
BNK: ____________________________
ABA: ____________________________
ACCT: ____________________________

Credit and Collections:
Attn: ____________________________
Phone: ____________________________
Facsimile: ____________________________

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Troutman Sanders LLP
100 SW Main St, Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com
The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

<table>
<thead>
<tr>
<th>Party A Tariff</th>
<th>Tariff:</th>
<th>Dated:</th>
<th>Docket Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party B Tariff</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Article Two**

Transaction Terms and Conditions

[ ] Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive

[ ] Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

[X] Cross Default for Party A:

Events of Default; Remedies

[X] Party A: Cross Default Amount $_____

[ ] Other Entity: Cross Default Amount $_____

[X] Cross Default for Party B:

[X] Party B: Cross Default Amount $_____

[ ] Other Entity: Cross Default Amount $_____

5.6 Closeout Setoff

[X] Option A (Applicable if no other selection is made.)

[ ] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_______

[ ] Option C (No Setoff)

**Article 8**

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

[ ] Option A

[ ] Option B Specify: _________

[X] Option C Specify: _________

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at http://www.lacce.org/, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later
than 90 days after the applicable 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30.

(b) Credit Assurances:

[X] Not Applicable
[ ] Applicable

(c) Collateral Threshold:

[X] Not Applicable
[ ] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $_______: provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_________

Party B Rounding Amount: $_________

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

[X] Other:
    Specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: N/A____________________

Guarantee Amount: N/A____________________
8.2 Party B Credit Protection:

(a) Financial Information:

[ ] Option A
[X] Option B Specify: _____________
[ ] Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at [website]. 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[ ] Not Applicable
[X] Applicable

(c) Collateral Threshold:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $_______________; provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

Party A Rounding Amount: $_______________

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:
[X] It shall be a Downgrade Event for Party A if Party A’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if Party A is not rated by either S&P or Moody’s.

[ ] Other: Specify: It shall be a Downgrade Event for Party A if Party A’s Guarantor’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if Party A is not rated by either S&P or Moody’s.

(e) Guarantor for Party A: __________

Guarantee Amount: __________

**Article 10**

Confidentiality

[X] Confidentiality Applicable  If not checked, inapplicable.

**Schedule M**

[X] Party A is a Governmental Entity or Public Power System

[X] Party B is a Governmental Entity or Public Power System

[X] Add Section 3.6. If not checked, inapplicable

[X] Add Section 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

**Other Changes**

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party A, and with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith, and shall exclude, in the case of Party A, any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.
3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

   “1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of June 27, 2017, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

   (i) deleting the phrase “at the Delivery Point” from the second line;

   (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

   (iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification
or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as 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.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols,
operating procedures and scheduling practices for the relevant region.”

19) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

20) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

21) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

22) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also be entitled to its remedies under Section 4.1;”

“(j) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(k) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

“(l) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below in Schedule M) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document.”

“(m) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one
of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

23) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars ($0.00).”

24) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

25) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

26) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL
DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”;

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

27) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

28) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days” and before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

29) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

30) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

31) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by
the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

32) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

33) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

34) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;” and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH
PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN LOS ANGELES, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

35) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

36) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or
electronic mail transmission shall be effective as delivery of a manually executed signature page.”

37) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

38) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

39) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”;

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected...
from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

40) The following Mobile-Sierra clause shall be added as Section 10.12:

“10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the Mobile Sierra “public interest” standard of review set forth in Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or
otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

41) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

42) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B (i) a certificate of good standing issued by the ___[State]____ Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

43) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a ________________

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

44) The following new Section shall be added as Section 10.16:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

45) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date
the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment
originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) **Calculation of Floating Price.** For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

46) The following new Section shall be added as Section 10.18:

“**Generally Accepted Accounting Principles.** Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

47) The following new Section shall be added as Section 10.19:

“No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.”
IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

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

By: ________________________________  By: ________________________________

Name: ________________________________  Name: ________________________________

Title: ________________________________  Title: ________________________________

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.
ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. 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.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. 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.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “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 of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

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

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The
applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 “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 a Terminated Transaction, determined in a commercially reasonable manner.

1.25 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

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

1.29 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. 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.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.
1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its
owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law
requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of
the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties
shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and
any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated
collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions
(including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated
agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any
terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three
(3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the
form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing
of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be
deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business
Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be
forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer
of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be
deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party
objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall
be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Confirmation was sent
more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Confirmation was
sent prior to Seller’s Confirmation, in which case Buyer’s Confirmation shall be deemed to be accepted and
shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed
Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this
Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those
provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions),
which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration
provisions or additional representations and warranties), such provisions shall not be deemed to be accepted
pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing
shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of
a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”)
of all telephone conversations between the Parties to this Master Agreement, and 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. The Recording, and the terms and conditions described
therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to a particular
Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full
execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any
conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller’s and Buyer’s Obligations. With respect to each Transaction, Seller shall sell and deliver,
or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the

Page 68
Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. 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 or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) 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;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date thereof one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party’s Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor’s guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the
satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

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 or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) 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 two (2) Business Days of receipt of 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; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff,
combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any 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.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and
7.1 Limitation of Remedies, Liability and Damages.  EXCEPT AS SET FORTH HEREIN THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.  THE PARTIES CONFIRM THAT THE

Each single Transaction resulting under this Section shall be deemed part of the single, divisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.9 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, any payments or credits shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE
EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR’S 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. 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. 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 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’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 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 Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.
(b) **Credit Assurances.** If Party A has reasonable grounds to believe that Party B’s creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) **Collateral Threshold.** If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) (“Party B Performance Assurance”), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) **Downgrade Event.** If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 **Party B Credit Protection.** The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) **Financial Information.** Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of such party’s 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 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.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. 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 the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A’s creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event ofDefault has occurred), the Termination Payment that would be owed to Party B plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event ofDefault under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by
Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all 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, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral 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, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor’s obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master 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 government authority (“Governmental Charges”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). 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 the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. 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.
ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days’ prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, 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 legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are 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 law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;

(v) 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;

(vi) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section
2.3) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 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 Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. 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. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. 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. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, 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 Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. 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 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depositary Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.
If the Claiming Party is Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue
permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

   Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

   Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depositary Bank and such notice shall include information regarding the replacement Secured Account.

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or
curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into ______________ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis...
(individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.


A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider’s transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer’s non-performance, then at Seller’s choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller’s obligation to schedule and deliver the Product at an ADI is subject to Buyer’s obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by
both Seller and Buyer into and within the Receiving Transmission Provider’s transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer’s Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider’s notice of rejection (“Buyer’s Rejection Notice”). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer’s own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer’s own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller’s inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer’s Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed
to have failed to receive the Product and Buyer shall be liable to Seller for amounts
determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails
to Timely Send Buyer’s Rejection Notice. If Buyer fails to make a Timely Request for
Firm Transmission or Buyer fails to timely deliver Buyer’s Rejection Notice, then Buyer
shall bear the risk of interruption or curtailment of transmission from the Designated
Interface. In such circumstances, if Seller’s delivery is interrupted as a result of
transmission relied upon by Buyer from the Designated Interface, then Seller shall be
deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have
failed to receive the Product and Buyer shall be liable to Seller for amounts determined
pursuant to Article Four.

4. Transmission.

A. Seller’s Responsibilities. Seller shall be responsible for transmission
required to deliver the Product to the Designated Interface or ADI, as the case may be. It
is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery
obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If
Seller’s scheduled delivery to Buyer is interrupted as a result of Buyer’s attempted
transmission of the Product beyond the Receiving Transmission Provider’s system border,
then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall
be deemed to have failed to receive the Product and Buyer shall be liable to Seller for
damages pursuant to Article Four.

B. Buyer’s Responsibilities. Buyer shall be responsible for transmission
required to receive and transmit the Product at and from the Designated Interface or ADI,
as the case may be, and except as specifically provided in Section 3A and 3B, shall be
responsible for any costs associated with transmission therewith. If Seller is attempting to
complete the designation of an ADI as a result of Seller’s rights and obligations hereunder,
Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An “Into” Product shall be subject to the “Force Majeure”
provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and
Buyer recognize that there may be multiple parties involved in the delivery and receipt of the
Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the
Product from a succession of other sellers (“Other Sellers”), the first of which Other Sellers shall
be causing the Product to be generated from a source (“Source Seller”) and/or (2) Buyer may be
selling the Product to a succession of other buyers (“Other Buyers”), the last of which Other Buyers
shall be using the Product to serve its energy needs (“Sink Buyer”). Seller and Buyer further
recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to
either (a) the original identification of the Designated Interface or ADI (which designation may be
made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product.

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability
council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.
EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on __________, ___ between ______________ (“Party A”) and ______________ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: ____________________________________________

Buyer: ____________________________________________

Product:

[] Into __________________, Seller’s Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: ______________________________________)

[] Unit Firm

(Specify Unit(s): ______________________________________)

[] Other ______________________________________

[] Transmission Contingency (If not marked, no transmission contingency)

[] FT-Contract Path Contingency [] Seller [] Buyer

[] FT-Delivery Point Contingency [] Seller [] Buyer

[] Transmission Contingent [] Seller [] Buyer

[] Other transmission contingency

(Specify: ______________________________________)

Contract Quantity: ______________________________________

Delivery Point: ______________________________________

Contract Price: ______________________________________

Energy Price: ______________________________________

Other Charges: ______________________________________
Item 9 – Delegation of Authority – Attachment 2

Confirmation Letter
Page 2

Delivery Period: ____________________________________________________________

Special Conditions: ________________________________________________________

Scheduling: _________________________________________________________________

Option Buyer: _______________________________________________________________

Option Seller: _______________________________________________________________
  Type of Option: _____________________________________________________________
  Strike Price: ________________________________________________________________
  Premium: _________________________________________________________________
  Exercise Period: ___________________________________________________________

This confirmation letter is being provided pursuant to and in accordance with the Master Power
Purchase and Sale Agreement dated ______________ (the “Master Agreement”) between Party A and Party
B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used
but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]                                                  [Party B]

Name: ____________________________________________ Name: _______________________
Title: ____________________________________________ Title: _________________________
Phone No: ______________________________________ Phone No: _____________________
Fax: ____________________________________________ Fax: ___________________________
2EI CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between _________________ (“Seller”)
And
Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”)
dated _________________
Transaction Date: _________________ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Clean Power Alliance of Southern California for purposes of delivering CCA service to certain customers located within the Counties of Los Angeles and Ventura;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC has certified the Implementation Plan;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, 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, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.
“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.


“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.


“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility, or ACS resource that has a nuclear or coal-fired generating facility in the ACS portfolio.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Clean Power Alliance of Southern California” means the community choice aggregation program operated by Buyer.
“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Clean Power Alliance of Southern California Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the Counties of Los Angeles and Ventura.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price ($/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“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, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.
“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Product” has the meaning set forth in Section 2.1 hereof.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.


“Renewable Energy Contract Price” shall mean the price ($/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“SCE” means Southern California Edison, its successors and assigns.

“Security Documents” has the meaning set forth in the Master Agreement.
“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

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

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

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

2. **PRODUCT.**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “**Product**,” which is comprised of one or more of the following:

(a) the quantity of Energy specified in Section 7.1;

(b) the quantity of Renewable Energy specified in Section 7.2; and

(c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 **Change in Law.**

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall
perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below.

2.3 RPS Standard Terms and Conditions.

**STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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.

**STC REC-1: Transfer of Renewable Energy Credits**

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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.

**STC REC-2: Tracking of RECs in WREGIS**

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 this contract.

**STC 17: Applicable 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.

2.4 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit B & C respectively; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Renewable Energy and Carbon Free Source as defined herein. For other Energy deliveries hereunder, if any, Seller may use Specified Sources of Power or Unspecified Sources of Power; provided that no Energy shall be procured from unit-specific sources that are nuclear or coal-fired resources, and any Energy delivered under this Confirmation from Specified Sources associated with Category 2 Renewable products shall be from Carbon Free Sources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.5 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, 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. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer’s sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage (i.e. with WREGIS Certificates produced within the same calendar year).
and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.6 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.7. Additional Terms and Conditions

(1) Seller Representations and Warranties: Seller represents and warrants:

(a) Seller has not sold the Product or any Program Attributes of the Product to be transferred to Buyer to any other person or entity;

(b) For the sale of Renewable Energy and Carbon Free Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer’s behalf.

3. DELIVERY PERIOD. This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

<table>
<thead>
<tr>
<th>Start Date:</th>
<th>End Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. DELIVERY POINT.
### Table: Product and Delivery Point

<table>
<thead>
<tr>
<th>Product</th>
<th>Delivery Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>TH_NP15_GEN-APND</td>
</tr>
<tr>
<td>Renewable Energy</td>
<td>CAISO or a California Balancing Authority inside the California State boundaries</td>
</tr>
<tr>
<td>Carbon Free Energy</td>
<td>CAISO or a California Balancing Authority inside the California State boundaries</td>
</tr>
</tbody>
</table>

5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Carbon Free Energy and Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
7.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include all Renewable Energy Credits associated with such Renewable Energy.

7.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. MONTHLY BILLING SETTLEMENT.

8.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct SCE to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to SCE) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the tenth (10th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-third (23rd) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-third (23rd) day of the month.

8.3 Specified Source of Power. Seller shall deliver the Specified Source of Power associated with the Renewable Energy and Carbon Free Energy to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such delivery.

9. COMPLIANCE REPORTING. Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

10. NO RESTRICTION. Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibits A, B and C.
11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer’s financial performance, Buyer’s performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports requested by Seller and such failure is not remedied within fifteen (15) Business Days of Seller’s written request therefor and notice of a potential Event of Default, such failure shall be an Event of Default in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

   (a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

   (i) **Customer deposit report** including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

   (ii) **Customer on-bill prepayment report** including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts; and

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers.

(b) Semi-Annual Reports. The following report shall be provided by Buyer to Seller not later than 20 days following the end of the first six calendar months of each Buyer fiscal year: consolidated and consolidating financial statements for such six-month period prepared in accordance with generally accepted accounting principles. Such financial statements shall include, at a minimum, a detailed profit and loss statement, balance sheet, statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the annual financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time.

12.3 Annual Reports. The following report shall be provided by Buyer to Seller not later than 120 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer’s financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated ______________ (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement.
Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

<table>
<thead>
<tr>
<th>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A – Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</td>
</tr>
</tbody>
</table>

____________________________

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

Sign: ____________________________  Sign: ____________________________

Print: ____________________________  Print: ____________________________

Title: ____________________________  Title: ____________________________
Exhibit A

Energy Contract Quantity and Price Schedule

[TBD]
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

[TBD]
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
SECURITY AGREEMENT

This SECURITY AGREEMENT (this “Agreement”) dated as of ___________, 2018, is entered into between Clean Power Alliance of Southern California, a California joint powers authority, as pledgor (“CPA”), and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”), for the benefit of the PPA Providers (as defined below), as Secured Creditors (as defined below).

RECITALS:

A. CPA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which CPA has agreed, or will agree, to purchase the Product from such PPA Provider and shall cause such PPA Provider to become a party to the Intercreditor Agreement (as defined below).

B. CPA shall sell the Product it purchases from PPA Providers to CPA’s customers at rates established by CPA from time to time.

C. CPA generates accounts receivable owing to CPA by CPA’s customers for such Product.

D. CPA’s customers are billed by SCE (as defined below) and instructed to remit to SCE sums they owe for the Product provided by CPA.

E. As of the date hereof, CPA has directed SCE to remit all present and future collections on accounts receivable now or hereafter billed by SCE on behalf of CPA to Collateral Agent, for remittance to a Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and CPA direct SCE otherwise.

F. CPA desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below).

G. The PPA Providers, CPA, and the Collateral Agent have entered into the Intercreditor Agreement (as defined below) wherein the PPA Providers appointed River City Bank, as Collateral Agent, to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral; and

H. CPA and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).
NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California are required or authorized to close.

“Collateral” means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depositary Bank for credit or with respect to any Deposit Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term “Collateral” shall not include any amounts distributed to CPA pursuant to Section 6.02(iv).

“Collateral Agent” has the meaning given to such term in the Preamble hereof.

“Control” has the meaning given to such term in Section 9-104 of the UCC.

“Control Agreements” means the Account Control Agreement, dated as of the date hereof, among the Depositary Bank, CPA and Collateral Agent and any other agreements entered into among Depositary Bank, CPA and Collateral Agent which shall designate the Deposit Accounts as blocked accounts under the Control of Collateral Agent,
for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Credit Rating” means for a Qualified Institution the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or, if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

“Customer” means any customer of CPA who purchases the Product from CPA but is invoiced by SCE, and any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” means the Lockbox Account, together with any other Deposit Account or Securities Account (as such terms are defined in the UCC) from time to time pledged by CPA to Collateral Agent, for the benefit of Secured Creditors, to secure the Obligations.

“Depositary Bank” means River City Bank, a California corporation, in its capacity as depositary bank, and its successors and assigns.

“Direction Letter” means that certain letter, a copy of which has been delivered to the Collateral Agent, from CPA to SCE dated as of the date of this Agreement pursuant to which CPA has directed SCE to remit all of the Proceeds on the Receivables collected by SCE from Customers to the Lockbox Account for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and CPA jointly instruct SCE to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to SCE.

“Discharge Date” means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by CPA under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

“Distribution Date” means the twenty-third (23rd) day of each month.

“Distribution Date Certificate” means a certificate prepared and submitted by CPA in accordance with Section 6.03.

“Event of Default” has the meaning set forth in the applicable Power Purchase Agreement.

“Implementation Plan” means that certain Implementation Plan filed with and certified by the California Public Utilities Commission (CPUC).

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors
from time to time party thereto and CPA, as amended, supplemented, restated or replaced from time to time.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the Secured Creditors and issued by a Qualified Institution.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” means the deposit account no. ******_____, which is maintained in the name of CPA and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depositary Bank, and any replacement account, in each case, pursuant to the Control Agreements.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of ________, 2018, between ________________ and CPA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of ________, 2018, between ________________ and CPA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of ________, 2018, between ________________ and CPA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(iv) ; the Master Power Purchase and Sale Agreement, dated as of ________, 2018, between ________________ and CPA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Moody’s” means Moody’s Investor Services, Inc.

“Obligations” means all of the obligations and liabilities of CPA to each PPA Provider, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term “Obligations” also includes all of CPA’s other
present and future obligations to each PPA Provider under the Transaction Agreements, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of CPA. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against CPA under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Power Purchase Agreement” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to CPA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“Product” means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Master Agreements.

“Qualified Institution” means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor’s, or (ii) A3 or better from Moody’s, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor’s and Moody’s, A- or better from Standard & Poor’s and A3 or better from Moody’s and (b) assets of at least Ten Billion Dollars ($10,000,000,000).

“receivable” means an Account evidencing CPA’s rights to payment for Product, billed in an invoice sent to a Customer by SCE, together with all late fees and other fees which SCE and CPA agree are to be charged in such invoice to the Customer by SCE on behalf of CPA.

“Regular Charges” means, as of any date of determination, amounts then due and owing to a PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

“Regular Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider as calculated by CPA in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the
denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

“Required Secured Creditors” has the meaning given to such term in the Intercreditor Agreement.

“Reserve Amount” means an initial amount of ________________ Dollars ($______________) for Phase 1 (as such Phases are defined in the Implementation Plan), plus an additional ________________ Dollars ($______________) for Phase 2, for a total of ________________ Dollars ($______________). If CPA is not subject to an Event of Default, the total Reserve Amount shall automatically be reduced by twenty percent (20%) annually, upon the annual anniversary of the date on which the Phase 2 confirmation(s) were executed (or next Business Day if the anniversary date is not a Business Day).

“SCE” means Southern California Edison, its successor and assigns or any other Person that is the host utility that bills Customers in CPA’s service territory and collects payments for Product from such Customers on behalf of CPA.

“Secured Creditors” means each PPA Provider party to the Intercreditor Agreement, and its respective successors and assigns.

“Standard & Poor’s” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“Supplemental Payment” means, as of any date of determination, all Obligations owing by CPA to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

“Supplemental Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination of transactions and/or acceleration of all amounts owing thereunder in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” has the meaning given to such term in the Intercreditor Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Intercreditor Agreement, this
Agreement and all other agreements, instruments or documents to which CPA is a party and which are executed and delivered from time to time in connection with or as security for CPA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “Account”, “Investment Property”, and “Proceeds” have the respective meanings set forth in Article 9 of the UCC. The terms “Security” and “Security Entitlements” have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, CPA hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority continuing security interest in and continuing lien on all of CPA’s right, title and interest in and to the Collateral, including the following:

(a) the prompt and complete payment, when due and payable, of all Obligations;

(b) the timely performance and observance by CPA of all covenants, obligations and conditions contained in the Transaction Agreements; and

(c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by CPA to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not
allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving CPA.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by CPA so long as any of the Obligations are outstanding.

Section 3. **Representations and Warranties.**

CPA represents and warrants to Collateral Agent that:

3.01 **Title.** It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 **Names, Etc.** As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address and principal place of business, and federal employer identification number of CPA is as follows: Clean Power Alliance of Southern California, a California joint powers authority, 500 West Temple Street, Los Angeles, CA 90012, federal employer identification number: ______________.

3.03 **Changes in Circumstances.** CPA has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a “new debtor” (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 **Security Interests.** The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. CPA owns good and marketable title to the Collateral free and clear of all Liens, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. CPA has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by CPA or is known by CPA to exist with respect to the Collateral. At the time the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in CPA. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by CPA have been obtained.

Section 4. **Covenants.**

CPA hereby stipulates and agrees with the Collateral Agent as follows:

4.01 **Perfection by Control.** CPA shall not be permitted to withdraw funds from the Deposit Accounts until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit
Account shall give the Collateral Agent the sole power to direct Depositary Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, CPA shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

(a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;

(b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;

(c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and

(d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at CPA’s places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by CPA with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. CPA is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any Lien and CPA shall defend the same against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Agent. CPA shall not (a) grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, or (c) cause or permit any Person other than Collateral Agent to have Control of any Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days’ prior written notice to the Collateral Agent, CPA shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its name from the name shown as its current legal name in Section 3 of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the Collateral.
if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. CPA authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs CPA to, and CPA hereby agrees, at its sole cost and expense to, prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be necessary to perfect and continue the security interest granted herein. CPA shall deliver to the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall make available to any PPA Provider upon request.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. CPA has, pursuant to the Direction Letter, irrevocably instructed SCE to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and CPA direct otherwise in writing. The Collateral shall be collected by Collateral Agent from SCE pursuant to the Direction Letter. CPA shall periodically take such additional measures as may be commercially reasonable to cause SCE or Customers to make all payments due to CPA into the Lockbox Account. All invoices issued by or on behalf of CPA shall direct payment into the Lockbox Account. CPA shall provide Collateral Agent with such proof of compliance with this Section 5.01 as Collateral Agent may reasonably request from time to time. Without the prior written consent of Collateral Agent (acting at the written direction of the Required Secured Creditors), CPA shall not (a) terminate, amend, revoke or modify such payment instructions to SCE or Customers or (b) direct or cause, directly or indirectly, SCE or any Customer to make any payments except in accordance with such payment instructions. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by CPA, (i) they shall be held in trust by CPA for the benefit of the Collateral Agent, (ii) CPA shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein, (iii) CPA shall take such commercially reasonable steps as necessary to require such Customer or SCE to make any future remittances into the Lockbox Account and (iv) such activity shall be reported promptly to Collateral Agent following CPA’s receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by SCE until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, CPA remains liable to Collateral Agent and Secured Creditors for any deficiency.
5.04 **Attorney-in-Fact.** Collateral Agent is hereby appointed the attorney-in-fact of CPA to receive, endorse and collect all checks made payable to the order of CPA representing any payment or other distribution in respect of the Collateral.

### Section 6. Establishment of and Distributions From Deposit Accounts.

6.01 **Establishment of Deposit Accounts.** CPA shall establish the Deposit Accounts in CPA’s name at Depositary Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Deposit Accounts and all interest accumulated thereon shall be held and disbursed by the Depositary Bank in accordance with the terms and conditions of the Control Agreements and this Agreement. The Deposit Accounts are subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither CPA nor any person or entity claiming on behalf of or through CPA shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Deposit Accounts including (i) the right to specify the amount of payments to be made from the Deposit Accounts, (ii) when such payments are to be made out of the Deposit Accounts and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Deposit Accounts. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 **Priority of Distributions of Collateral.** Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Lockbox Account or otherwise received on the Collateral in accordance with the following priority:

(i) *first,* to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;

(ii) *second,* to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iii) *third,* to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreements that have been invoiced to CPA, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys’ fees of outside counsel to the Collateral Agent; and

(iv) *fourth,* unless an Event of Default shall exist as to CPA, the balance, if any, after retention in the Lockbox Account of the Reserve Amount, shall be returned to CPA free and clear of the lien of this Agreement, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Lockbox Account and CPA shall only receive the amount of the balance, if any, that is in excess of such disputed amount.
Item 9 – Delegation of Authority – Attachment 4

until such time as the Collateral Agent receives written notice from the relevant PPA Provider and CPA that the dispute pursuant to Section 6.06 has been resolved.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by CPA in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, CPA shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “Distribution Date Certificate”) prepared by CPA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Lockbox Account is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days thereafter provide CPA with written notice thereof, with a copy to Secured Creditors, and (b) CPA shall deposit such shortfall amount into the Lockbox Account not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee CPA’s replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit CPA’s obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Deposit Accounts.

6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if CPA and all Secured Creditors confirm in writing to the Collateral Agent that no such Event of Default exists or is continuing, and CPA provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, CPA may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depositary Bank to release and distribute the Reserve Amount to CPA. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by CPA. CPA shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then CPA shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA Providers issued by a Qualified Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises CPA and Collateral Agent in writing that the calculations by CPA in any Distribution Date Certificate are in its opinion materially incorrect, then CPA and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the
relevant Distribution Date, CPA shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and CPA. In the interim, the Distribution Date Certificate originally submitted by CPA shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox Account, even if such distributions would result in a shortfall of the disputed amount. However, CPA shall not be entitled to receive any funds if such distribution to CPA would result in a shortfall of the disputed amount.

6.07 Earnings on Deposit Accounts. CPA shall establish the Deposit Accounts as non-interest bearing accounts.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent may exercise, without any other notice to or demand upon CPA, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, CPA HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT’S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in
exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by CPA. To the extent permitted by applicable law, CPA hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. TO THE EXTENT THAT IT LAWFULLY MAY, CPA HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPEDE THE ENFORCEMENT OF COLLATERAL AGENT’S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, CPA HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.

Section 7. Miscellaneous.

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as CPA or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by CPA and Collateral Agent.
7.04 **Expenses.** If CPA fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. CPA agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. CPA agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 **Duty of Care; Earnings.** Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or the Control Agreements. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent’s possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct CPA as set forth in Section 4.05 hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer’s certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer’s certificate or an opinion of counsel.

7.06 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of CPA, the Secured Creditors, and the Collateral Agent (provided that CPA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon CPA, its successors and assigns,
and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 **Counterparts.** This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 **GOVERNING LAW; JURISDICTION.** THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA IN LOS ANGELES COUNTY AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 **WAIVER OF JURY TRIAL.** EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 **CONSENT TO INJUNCTIVE RELIEF.** WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, CPA ACKNOWLEDGES THAT ITS VIOLATION OF SECTION 5.01 WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, CPA HEREBY (I) CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF SECTION 5.01, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.
7.11 **Captions.** The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 **Termination.** Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, CPA; (c) CPA has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of CPA, have executed a written termination statement, and Collateral Agent has reassigned to CPA, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to CPA. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of CPA, or any other event or proceeding affecting CPA or any other obligor. At CPA’s request, Collateral Agent shall, at CPA’s reasonable expense, instruct Depositary Bank to release all assets credited to the Deposit Accounts to CPA, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by CPA to effect the termination and release of the liens on the Collateral, including notice to SCE that the Direction Letter is terminated.

7.13 **Severability.** The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 **Disclosure of Information.** CPA hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to CPA as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreements, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
as Pledgor

By: ________________________________
   Name: 
   Title: 

Notice Address:

Clean Power Alliance of Southern California
500 West Temple Street
Los Angeles, CA 90012
Attention: __________
Email: __________

RIVER CITY BANK,
not in its individual capacity, but solely as Collateral Agent

By: ________________________________
   Name: 
   Title: 

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention: Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com
Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), hereby certifies, on behalf of CPA in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of ________, 20__ (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between CPA and ___________, as collateral agent (“Collateral Agent”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [___________ , 20__].

No Event of Default exists as of the date of this certificate and CPA does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [_______________ Dollars ($_______)]; [Include this paragraph for each PPA Provider]

2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [_______________ Dollars ($_______)]; [Include this paragraph for each PPA Provider]

3. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to CPA, an aggregate amount equal to [_______________ Dollars ($_______)]; and

4. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount are to be disbursed to CPA into the account designated by CPA. 

[Signature page follows]
I hereby certify, on behalf of CPA and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: ________________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

34393398v1
INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,

dated as of ________________, 2018,

by and among

RIVER CITY BANK,
as Collateral Agent,

THE PPA PROVIDERS
FROM TIME TO TIME
PARTY HERETO,

and

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.1. Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.2. Other Interpretive Provisions</td>
<td>3</td>
</tr>
<tr>
<td>2. Relationships Among Secured Creditors</td>
<td>4</td>
</tr>
<tr>
<td>Section 2.1. Liens in the Collateral</td>
<td>4</td>
</tr>
<tr>
<td>Section 2.2. No Debt Subordination</td>
<td>4</td>
</tr>
<tr>
<td>Section 2.3. Restrictions on Enforcement Action</td>
<td>4</td>
</tr>
<tr>
<td>Section 2.4. No Restriction on Terms of Power Purchase Agreements</td>
<td>4</td>
</tr>
<tr>
<td>Section 2.5. Representations and Warranties</td>
<td>5</td>
</tr>
<tr>
<td>Section 2.6. Cooperation; Accountings</td>
<td>5</td>
</tr>
<tr>
<td>3. Agency Provisions</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.1. Appointment and Authorization of Collateral Agent</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.2. Collateral</td>
<td>6</td>
</tr>
<tr>
<td>Section 3.3. Delegation of Duties</td>
<td>6</td>
</tr>
<tr>
<td>Section 3.4. Exculpatory Provisions</td>
<td>7</td>
</tr>
<tr>
<td>Section 3.5. Reliance by Collateral Agent</td>
<td>7</td>
</tr>
<tr>
<td>Section 3.6. Knowledge</td>
<td>7</td>
</tr>
<tr>
<td>Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors</td>
<td>7</td>
</tr>
<tr>
<td>Section 3.8. Reporting</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.9. Indemnification</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.10. Collateral Agent May Act in its Individual Capacity</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.11. Successor Collateral Agent</td>
<td>8</td>
</tr>
<tr>
<td>4. Actions by Collateral Agent</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.1. Duties and Obligations</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.2. Voting; Amendments to Transaction Agreements</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.3. Actions Pertaining to the Collateral</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.4. Duty of Care</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.5. Further Assurances</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.6. Distribution of Proceeds of Collateral</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.7. Deposit Accounts</td>
<td>11</td>
</tr>
</tbody>
</table>
Section 4.8. Restoration of Obligations ................................................................. 11
Section 4.9. Privileged Materials ........................................................................... 12
Section 4.10. Action Upon Instruction .................................................................. 12

SECTION 5. Bankruptcy Proceedings ........................................................................... 12
SECTION 6. Miscellaneous .......................................................................................... 13
Section 6.1. Amendments to this Agreement and Assignments ............................ 13
Section 6.2. Marshalling .......................................................................................... 13
Section 6.3. Governing Law; Jurisdiction ............................................................. 13
Section 6.4. Waiver of Jury Trial ............................................................................ 14
Section 6.5. Joinder ................................................................................................ 14
Section 6.6. Counterparts ....................................................................................... 14
Section 6.7. Termination ......................................................................................... 14
Section 6.8. Controlling Terms .............................................................................. 15
Section 6.9. Notices ............................................................................................... 15
Section 6.10. No Recourse Against Constituent Members of CPA ......................... 15

Exhibit A – Form of Joinder
INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT (this “Agreement”), dated as of _______________, 2018 (the “Effective Date”), is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as Collateral Agent (“Collateral Agent”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “PPA Provider”) and (iii) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”).

RECITALS:

A. CPA has (i) entered into the Master Agreements (as defined in the Security Agreement), and (ii) may in the future enter into, a Power Purchase Agreement (as defined in the Security Agreement) with a PPA Provider pursuant to which CPA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. CPA shall sell the Product it purchases from PPA Providers to CPA’s customers at rates established by CPA from time to time.

C. Pursuant to the Security Agreement (as defined below) CPA has pledged to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as such terms are defined in the Security Agreement).

D. CPA’s customers are billed by Southern California Edison (“SCE”) and instructed to remit to SCE sums they owe for the Product provided by CPA.

E. As of the date hereof, CPA has directed SCE to remit all present and future collections on accounts receivable now or hereafter billed by SCE on behalf of CPA to Collateral Agent for remittance to the Lockbox Account (as defined in the Security Agreement) maintained by the Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and CPA direct SCE otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint River City Bank as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.
I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

“Affiliate” means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 51% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” shall have the meaning assigned thereto in the Preamble hereof.

“Bankruptcy Proceeding” means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“Event of Default” has the meaning set forth in the applicable Power Purchase Agreement.

“Joinder” has the meaning given to such term in Section 6.5.

“Obligations” has the meaning given to such term in the Security Agreement.

“Required Secured Creditors” means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least fifty percent (50%) of the total aggregate Sharing Percentage, as calculated on such date.

“Secured Creditors” means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

“Security Agreement” means the Security Agreement, dated as of even date herewith, between CPA and Collateral Agent for the benefit of Secured Creditors, granting a security interest
in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

“Sharing Percentage” means, as of any date, with respect to each PPA Provider as calculated by CPA in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

“Termination Payment” means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by CPA thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Security Agreement, this Agreement and all other agreements, instruments or documents to which CPA is a party and which are executed and delivered from time to time in connection with or as security for CPA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.
SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of CPA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or CPA pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Creditor from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Creditor from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. CPA and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to CPA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and CPA consents to such disclosure to such Person or any party hereto.
Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

(a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and

(c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor’s historical practices.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank hereby accepts such designation and appointment. The Collateral Agent is a non-fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreements and each other document as may be necessary or convenient in connection with the foregoing; provided, however,
that the Collateral Agent shall not amend, modify or terminate the Control Agreements without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, the Control Agreements, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

(d) The Collateral Agent, hereby represents and warrants that (i) it has all requisite power and authority to execute, deliver and perform under this Agreement; (ii) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate or other action; (iii) no consent or approval of any other Person and no consent, license, approval or authorization of any governmental authority is required in connection with the execution, delivery, and performance by it of this Agreement; and (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the rights of creditors generally and general principles of equity regardless of whether such enforcement is considered in a proceeding in equity or at law.

Section 3.2. Collateral

(a) Deposit Accounts Subject to Collateral Agent’s Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such
Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent’s officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person’s own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to CPA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by CPA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of CPA to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to CPA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by CPA against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or CPA referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent’s officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it, except as expressly provided herein at Section 3.1 (d) and that
no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8.  Reporting

CPA shall provide online access for the Lockbox Account that enables the Collateral Agent and the Secured Creditors to view the balance of the Lockbox Account at any time. Collateral Agent will provide the Secured Creditors with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of CPA which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent’s receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any matter relating to payments or distributions of Collateral received by Collateral Agent.

Section 3.9.  Indemnification

CPA shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement; provided that neither CPA nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent’s fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

Section 3.10.  Collateral Agent May Act in its Individual Capacity

River City Bank, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with CPA and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11.  Successor Collateral Agent

(a) Collateral Agent may resign at any time upon at least 60 days’ prior written notice to the Secured Creditors and CPA, or may be removed by the demand of the Required Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not
remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to CPA, shall be appointed by the Secured Creditors provided, if an Event of Default as to CPA has occurred no such acceptance of the successor Collateral Agent by CPA shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent’s notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, CPA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation
SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement and the Security Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreements or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under the Control Agreements or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreements or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against CPA, the Deposit Accounts, the Depositary Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured
Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent’s actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct CPA as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer’s certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer’s certificate or an opinion of counsel.

Section 4.5. Further Assurances

CPA and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent
under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Required Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and the Control Agreements or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of CPA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.
(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by CPA.

(e) Any Collateral received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, CPA and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in the event there is a replacement of Collateral Agent. CPA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person’s rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA IN LOS ANGELES COUNTY AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY
CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time CPA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a “Joinder”) at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all Obligations owed to Collateral Agent and Secured Creditors, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.
Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent, CPA or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

Section 6.10. No Recourse Against Constituent Members of CPA

CPA hereby represents, warrants and agrees that (i) CPA is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members, (ii) CPA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith. In light of the foregoing, the Collateral Agent and the Secured Creditors will have no rights and will not make any claims, take any actions or assert any remedies against any of CPA’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of CPA or CPA’s constituent members, in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the Effective Date.

RIVER CITY BANK, not in its individual capacity, but solely as Collateral Agent

By: ________________________________
   Name:
   Title:

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention: Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com
Item 9 – Delegation of Authority – Attachment 5

_____________________, as Secured Creditor

By: _____________________________
   Name: __________________________
   Title: __________________________

Notice Address:

________________________
________________________
________________________
Attention: _______________

[Signature Page to Intercreditor and Collateral Agency Agreement]
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: ________________________________
   Name: ________________________________
   Title: ________________________________

Notice Address:

Clean Power Alliance of Southern California
500 West Temple Street
Los Angeles, CA 90012
Attention: ____________
EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

_____, in its capacity as Collateral Agent

With a copy to:

____

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of ____________, 2018 (as amended or restated from time to time, the “Intercreditor Agreement”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among _____, as Collateral Agent, and the PPA Providers party thereto, relating to Clean Power Alliance of Southern California, a California joint powers authority (“CPA”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “Joinder”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between CPA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of ___________ as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: ____________, 20__.  

________________________________________,
By: ________________
Name: ________________
Title: __________________

[Insert address for notices]
DATED as of ______________, 2018

(1) RIVER CITY BANK,
as Account Bank,

(2) CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
as CPA,

and

(3) RIVER CITY BANK, not in its individual capacity, but solely as collateral agent,
as Secured Party.

ACCOUNT CONTROL AGREEMENT
ACCOUNT CONTROL AGREEMENT (this “Agreement”) dated as of __________, 2018 (the “Effective Date”)

BETWEEN:

(1) RIVER CITY BANK, a California corporation (the “Account Bank”);
(2) CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”);
and
(3) RIVER CITY BANK, a California corporation, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

WHEREAS:

(A) CPA has pledged to the Secured Party (for the benefit of the PPA Providers (as defined in the Security Agreement), as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between CPA and Secured Party dated as of the Effective Date (the “Security Agreement”);

(B) CPA has directed Southern California Edison (“SCE”) to remit all present and future collections on accounts receivable now or hereafter billed by SCE and owed by CPA’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

(D) CPA intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. THE ACCOUNTS.

CPA hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number ***** (a non-interest-bearing deposit account held in the name of CPA) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “Lockbox Account”).

The parties hereto agree that the Lockbox Account shall be funded solely by electronic transfers of immediately available funds and that Account Bank shall not be required to accept any
other items for deposit into the Lockbox Account. All amounts payable for deposit into the Lockbox Account shall be paid to Account Bank at the following accounts:

Bank: River City Bank  
ABA#: _________________  
Account No. _____________

2. CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.

(a) The Lockbox Account shall be maintained by Account Bank in the name of “Clean Power Alliance of Southern California” and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the Lockbox Account without further consent by CPA or otherwise.

(b) Account Bank (i) shall disburse and/or invest funds held in the Lockbox Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, CPA will not have access to the funds in the Lockbox Account and that the Account Bank will not agree with CPA or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the Lockbox Account originated by CPA or such other party.

3. STATEMENTS AND OTHER INFORMATION.

(a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the Lockbox Account at such times such statements are provided to CPA and such other information relating to the Lockbox Account as shall reasonably be requested by Secured Party or CPA. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to CPA pursuant to any agreement governing or related to the Lockbox Account to Secured Party at such times such notices and statements are provided to CPA. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and CPA if Account Bank receives a notice that any other person claims that it has an interest in the Lockbox Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the Lockbox Account.

(b) Account Bank hereby confirms that (i) the Lockbox Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the Lockbox Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.
4. **FEES.**

CPA agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the Lockbox Account in accordance with the terms of the separate fee agreement entered into by CPA and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker’s lien against the Lockbox Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the Lockbox Account, except for claims and interests of the parties hereto. All of Account Bank’s present and future rights against the Lockbox Account are subordinate to Secured Party’s security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank’s rights, duties, liabilities and immunities:

(a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.

(b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or CPA after Secured Party has informed Account Bank that CPA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or CPA after Secured Party has informed Account Bank that CPA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or CPA after Secured Party has informed Account Bank that CPA has satisfied all of its obligations under the Power Purchase Agreements) as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

(c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.
Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

7. REPRESENTATIONS OF ACCOUNT BANK.

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

(a) **Organization, Corporate Authority.** Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.

(b) **Authorization.** Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.

(c) **Legal, Valid and Binding.** Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.

(d) **No Violation.** Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.

Each of CPA and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank’s reasonable control or for the indirect, special or consequential damages. CPA agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties,
judgments, liabilities, losses or expenses (including reasonable attorney’s fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any Lockbox Account at Account Bank or pursuant to this Agreement.

9. **TERMINATION.**

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) CPA. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated as of the Effective Date, between and among Secured Party, the PPA Providers, and CPA, at any time, with or without cause, upon its delivery of written notice thereof to each of CPA and Account Bank. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days’ prior written notice delivered to each of CPA and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the Lockbox Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. **IRREVOCABLE AGREEMENTS.**

CPA acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. **NOTICES.**

All notices, requests or other communications given to Account Bank, CPA or Secured Party shall be given in writing (including by facsimile) at the address specified below:

**Account Bank:**  
River City Bank  
Attention: Cash Management  
2485 Natomas Park Dr.  
Sacramento, CA, 95833

**CPA:**  
Clean Power Alliance of Southern California  
Attention: _______________  
500 West Temple Street  
Los Angeles, CA 90012  
Email: _______________
Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. MISCELLANEOUS.

(a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither CPA nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.

(c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.

(e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF CALIFORNIA. The parties agree that the State of California (i) is and
shall remain the “bank’s jurisdiction” of the Account Bank for purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the Lockbox Account and of CPA’s rights and interests in and to the Lockbox Account.

(f) JURY WAIVER AND JUDICIAL REFERENCE. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (1) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (2) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (3) APPOINTMENT OF A RECEIVER AND (4) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE
RIGHTS AND REMEDIES DESCRIBED IN THE FOREGOING CLAUSES (1) – (4) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).


(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

(g) CPA hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of California and of any California state court sitting
in Los Angeles County for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. CPA irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(h) CPA hereby irrevocably appoints ___________, [Title] ______________, Clean Power Alliance of Southern California, 500 West Temple Street, Los Angeles, CA 90012, from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. CPA undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of CPA. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[Signature page follows]
IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the Effective Date.

Account Bank

RIVER CITY BANK

By: ______________________________
Name:
Title:

CPA

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: ______________________________
Name:
Title:

Secured Party

RIVER CITY BANK, not in its individual capacity, but solely as Collateral Agent

By: ______________________________
Name:
Title:
This Confirmation Letter ("Confirmation") confirms the Transaction between Party 1 ("Seller") and Party 2 ("Buyer"), each individually a “Party” and together the “Parties”, dated as of ________________, 20__ (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 “Availability Incentive Payments” is defined in the Tariff.

1.4 “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.

1.5 “Buyer” is defined in the introductory paragraph hereof.

1.6 “CAISO” means the California Independent System Operator Corporation or its successor.

1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”

1.8 “Confirmation” is defined in the introductory paragraph hereof.

1.9 “Confirmation Effective Date” is defined in the introductory paragraph hereof.
1.10 “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.

1.11 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.12 “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.13 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

1.14 “Delivery Period” is defined in Section 4.1 hereof.

1.15 “Delivery Point” is defined in Section 4.2 hereof.

1.16 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.

1.17 “Excusable Event” means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.

1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.

1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.

1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.

1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.28 “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.

1.29 “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.
1.30 “Net Qualifying Capacity” is defined in the Tariff.

1.31 “Notification Deadline” is defined in Section 4.5 hereof.

1.32 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.33 “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.34 “Product” is defined in Article 3 hereof.

1.35 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

1.36 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

1.37 “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.38 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

1.39 “Replacement Capacity” is defined in Section 4.7 hereof.

1.40 “Replacement Unit” is defined in Section 4.5.

1.41 “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.42 “Scheduling Coordinator” is defined in the Tariff.
1.43 “Seller” is defined in the introductory paragraph hereof.

1.44 “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.45 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.46 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.47 “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.

1.48 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.49 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.50 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

1.51 “WSPP Agreement” is defined in the introductory paragraph hereof.
ARTICLE 2. UNIT INFORMATION

<table>
<thead>
<tr>
<th>Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Location:</td>
<td></td>
</tr>
<tr>
<td>CAISO Resource ID:</td>
<td></td>
</tr>
<tr>
<td>Unit SCID:</td>
<td></td>
</tr>
<tr>
<td>Unit NQC:</td>
<td></td>
</tr>
<tr>
<td>Unit EFC:</td>
<td></td>
</tr>
<tr>
<td>Resource Type:</td>
<td></td>
</tr>
<tr>
<td>Resource Category (1, 2, 3 or 4):</td>
<td></td>
</tr>
<tr>
<td>Flexible RAR Category (1, 2 or 3):</td>
<td></td>
</tr>
<tr>
<td>Path 26 (North or South):</td>
<td></td>
</tr>
<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date):</td>
<td></td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:</td>
<td></td>
</tr>
<tr>
<td>Run Hour Restrictions:</td>
<td></td>
</tr>
</tbody>
</table>

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the “Product”), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 Product Attributes

☐ RA Attributes
☐ RA Attributes with Flexible RA Attributes
☐ LAR Attributes
3.2 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: ____________, 20__, through ____________, 20__.

4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.
4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>RAR Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
</tr>
</tbody>
</table>

4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC and/or Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract
Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

(a) The “Notification Deadline” in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written
confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit’s Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes (“Replacement Capacity”) by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.

(c) In the event that Seller fails, or fails to cause a Unit’s Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller’s failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.
4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>RAR Capacity Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>$X.XX</td>
</tr>
<tr>
<td>February</td>
<td>$X.XX</td>
</tr>
<tr>
<td>March</td>
<td>$X.XX</td>
</tr>
<tr>
<td>April</td>
<td>$X.XX</td>
</tr>
</tbody>
</table>
### 4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit’s Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future
amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction; and
negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party’s sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit’s Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

Seller has notified each Unit’s Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller’s obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product (“End User”) defaults (however defined) under its agreement to purchase the Product from Buyer (“End User Purchase Agreement”) and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid amounts for Products delivered prior to termination, but only to the extent that Buyer has...
received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User’s default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PARTY 1

By: __________________________
Name: __________________________
Title: __________________________

PARTY 2

By: __________________________
Name: __________________________
Title: __________________________
To: Clean Power Alliance Board of Directors

From: CPA Staff

Subject: Adopt Resolution to Approve Phase 2 Rates

Date: April 5, 2018

RECOMMENDATION

It is recommended that the Board approve Resolution No. 18-006 (Attachment 1) approving CPA electric rates for Phase 2 commercial and industrial customers to become effective June 25, 2018, as shown in Attachment 2.

BACKGROUND

Staff are currently negotiating contracts for power supply for the load expected as part of Phase 2, which will enroll customers starting June 25, 2018. On April 30, 2018, CPA will send its first of four notices to CPA’s potential Phase 2 customers. These notices will inform CPA’s commercial, industrial, and municipal customers of their scheduled switchover to CPA service, describe the power product into which they would default, and provide the associated rate discount for that product. In addition, these notices will direct customers to our website for more information about our program and include these rates.

ANALYSIS & DISCUSSION

Rate Design Methodology

The conventional approach to rate design is to calculate the cost of service to all customers, and to allocate that cost across each of the various customer classes. Rates are then set to recover that cost from each customer class; that is, rates are set to allow for cost recovery for the cost of serving each customer class.

However, most CCAs take a different approach for the first several years of operation largely because the Investor Owned Utility (IOU) has previously performed this cost of service analysis and set its own rates on that basis. As a result, CCAs can simply establish their generation rates as a discount to the IOU generation rate which still ensures adequate cost recovery for the CCA.

Attachment 2 presents the proposed CPA generation rates for each applicable rate schedule under the 36% renewable (Base Rate) product. The rate proposal includes...
approximately 40 separate CPA rate schedules, corresponding to the number of distinct SCE generation rate options. To facilitate cost comparisons, the CPA generation rate schedule also lists the anticipated applicable non-bypassable surcharges (Power Charge Indifference Adjustment (PCIA), Competition Transition Charge (CTC), and Franchise Fee Surcharge) that SCE imposes directly on CPA customers’ bills.

For purposes of the CPA Base rate design, each SCE generation rate was reduced by 6%, and the SCE customer surcharges were subtracted, yielding the CPA generation rate. The 6% discount results in revenue collection for CPA sufficient to recover costs for 2018. It should be noted, however, that the actual discount the customer sees on their overall bill is less than this 6% since the other customer charges reduce the impact of the generate rate discount.

This rate design approach has the advantages of easy comparability and ease of customer communications in that the generation cost discount is the same, on a percentage basis, for all potential customers. Such comparability will ease the transition for customers to CPA service, ensure similar rate benefits are obtained by all participating customer classes and ensure compatibility of CPA rates with the SCE rates.

To illustrate the rate design approach underlying the proposed rates, the following example using estimated 2018 rates shows how each rate component is designed for the TOU-8 rate schedule for the Base Rate product.

The non-bypassable charges (PCIA and CTC) surcharges are applied on a per kWh basis and the CPA energy charges are reduced to offset these charges. The Generation Municipal Surcharge (or Franchise Fee) is a factor of 0.009095 that is multiplied by the otherwise applicable SCE rate and then subtracted from the energy and demand rates.

<table>
<thead>
<tr>
<th>Rate Component</th>
<th>SCE Generation*</th>
<th>Discount</th>
<th>Non-Bypassable**</th>
<th>GMS***</th>
<th>LACCE Generation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Energy Charge ($/kWh)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer Peak</td>
<td>$0.08246</td>
<td>6%</td>
<td>-</td>
<td>$0.01177</td>
<td>-</td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$0.05554</td>
<td>6%</td>
<td>-</td>
<td>$0.01177</td>
<td>-</td>
</tr>
<tr>
<td>Off-Peak</td>
<td>$0.03715</td>
<td>6%</td>
<td>-</td>
<td>$0.01177</td>
<td>-</td>
</tr>
<tr>
<td><strong>Winter</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$0.05369</td>
<td>6%</td>
<td>-</td>
<td>$0.01177</td>
<td>-</td>
</tr>
<tr>
<td>Off-Peak</td>
<td>$0.04274</td>
<td>6%</td>
<td>-</td>
<td>$0.01177</td>
<td>-</td>
</tr>
<tr>
<td><strong>Demand Charge ($/kW)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer Peak</td>
<td>$21.73</td>
<td>6%</td>
<td>N/A</td>
<td>-</td>
<td>$0.20</td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$4.17</td>
<td>6%</td>
<td>N/A</td>
<td>-</td>
<td>$0.04</td>
</tr>
</tbody>
</table>

* SCE 2018 rate
** PCIA & CTC
*** 0.009095 x SCE’s otherwise applicable generation rate
CPA’s data manager will assign customers to the appropriate CPA rate schedule by mapping them from their current SCE rate schedule, as indicated in Attachment 2. CPA’s data manager will be responsible for ensuring that each customer is billed in accordance with their assigned rate schedule.

Additional Renewable Products

In addition to developing rates for the Base Rate product, rates were also developed for the 50% Renewable Product and 100% Renewable Product. These rates were developed as adders to the detailed rates provided for the Base Rate product, to reflect the cost of additional renewable procurement. Based on power supply pricing, revenue requirement needs and consistency with other existing CCAs, the following adders are proposed:

- 50% Renewable product: $0.00083 per kWh
- 100% Renewable product: $0.01500 per kWh

Pro forma Impact

The proposed rates were developed based on indicative power supply costs obtained in the Power Supply RFO dated March 20, 2018, assumed load profiles and participation at a 75% rate across all non-residential rate classes for Phase 2.

Based on the projection of costs and revenues, CPA is projected to collect revenues sufficient to establish a 2018 ending reserve balance that is conservatively estimated to be $6.6 million.

Conclusion

The generation rates recommended for the Base Rate product are 6% lower than SCE’s 2018 rates resulting in an overall bill saving of approximately 3%.

The generation rates recommended for the 50% Renewable product are 5% lower than SCE’s 2018 generation rates resulting in an overall bill saving of approximately 2.5% to 3%.

The rates recommended for the 100% Renewable product are 14% higher than SCE’s 2018 rates resulting in an overall bill increase of approximately 6% to 7% from SCE’s current base rate. But, CPA rates for the 100% renewable product are between 9% and 30% lower than SCE’s comparable rate for their 100% renewable product, depending on rate schedule.

It should be noted that the savings results will vary by rate class and consumption patterns.
ATTACHMENTS

1. Resolution for CPA Rate Schedule Effective June 25, 2018
2. Rate Schedule Exhibits for Rate Resolution
RESOLUTION NO. 18-006

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA APPROVING CUSTOMER GENERATION RATES FOR PHASE 2

THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS, the Clean Power Alliance of Southern California was formed on June 27, 2017 as the Los Angeles Community Choice Energy Authority pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Southern California; and

WHEREAS, the Board of Directors have directed staff to procure power supply for Phase 2 load to provide three energy products (36% renewable, 50% renewable, and 100% renewable) and maximizing non-emitting energy resources for the non-renewable portions of the portfolio; and

WHEREAS, the Board of Directors also sought to provide a discount relative to Southern California Edison’s base rate for its 36% and 50% renewable energy products.

NOW THEREFORE, the Board of Directors (“Board”) of the Clean Power Alliance of Southern California does hereby resolve, determine, and order as follows:

Section 1. The proposed rate schedules as presented in Attachment 2 are hereby approved.

Section 2. The rates set forth in Attachment 2 shall remain in effect through December 2018.

Section 3. If SCE’s 2018 actual rates are significantly different than the estimated rates used to determine the rates for Phase 2, Staff may return to the Board for approval for revised rates.

PASSED AND ADOPTED this 5th day of April, 2017.

Chair, Clean Power Alliance of Southern California

Attest:

Secretary, Clean Power Alliance of Southern California
<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOMESTIC</td>
<td>DOMESTIC, D-PG, D-S, D-SDP, D-SDP-O, DE, DE-S, DE-SDP, DE-SDP-O</td>
<td>All Energy</td>
<td>$0.06044</td>
<td>$0.02030</td>
<td>$0.08074</td>
</tr>
<tr>
<td>TOU-EV-1</td>
<td>TOU-EV-1</td>
<td>Summer On-Peak</td>
<td>$0.17134</td>
<td>$0.02138</td>
<td>$0.19273</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02261</td>
<td>$0.01993</td>
<td>$0.04254</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.04620</td>
<td>$0.02016</td>
<td>$0.06636</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02336</td>
<td>$0.01994</td>
<td>$0.04336</td>
</tr>
<tr>
<td>TOU-EV-3-A</td>
<td>TOU-EV-3-A</td>
<td>Summer On-Peak</td>
<td>$0.24532</td>
<td>$0.01504</td>
<td>$0.26036</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.06045</td>
<td>$0.01323</td>
<td>$0.07369</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.04493</td>
<td>$0.01306</td>
<td>$0.05891</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02295</td>
<td>$0.01267</td>
<td>$0.03581</td>
</tr>
<tr>
<td>TOU-EV-4</td>
<td>TOU-EV-4</td>
<td>Summer On-Peak</td>
<td>$0.22602</td>
<td>$0.01865</td>
<td>$0.24466</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03521</td>
<td>$0.01678</td>
<td>$0.05199</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.01918</td>
<td>$0.01663</td>
<td>$0.03580</td>
</tr>
<tr>
<td>TOU-GS1-A</td>
<td>TOU-GS1A, TOU-GS1A-AE, TOU-GS1A-AEC, TOU-GS1A-C</td>
<td>Summer Off-Peak</td>
<td>$0.09273</td>
<td>$0.01355</td>
<td>$0.10628</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.06572</td>
<td>$0.01328</td>
<td>$0.07901</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.06123</td>
<td>$0.01324</td>
<td>$0.07447</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.05167</td>
<td>$0.01315</td>
<td>$0.06482</td>
</tr>
</tbody>
</table>
### Item 10 - Attachment 2
**Community Power Alliance**

**Proposed Rates - 36% Renewable Base Rate**

<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOU-GS-1-PRI-A</strong></td>
<td>TOU-GS1A, TOU-GS1A-AE, TOU-GS1A-AEC, TOU-GS1A-C</td>
<td>Summer On-Peak</td>
<td>$0.13126</td>
<td>$0.01392</td>
<td>$0.14518</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.06366</td>
<td>$0.01326</td>
<td>$0.07692</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.06366</td>
<td>$0.01326</td>
<td>$0.07692</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.04940</td>
<td>$0.01331</td>
<td>$0.06273</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.04940</td>
<td>$0.01331</td>
<td>$0.06273</td>
</tr>
<tr>
<td><strong>TOU-GS-1-B</strong></td>
<td>TOU-GS1B, TOU-GS1B-AE, TOU-GS1B-AEC, TOU-GS1B-C, TOU-GS1B-S</td>
<td>Summer On-Peak</td>
<td>$0.11113</td>
<td>$0.01373</td>
<td>$0.12486</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.02325</td>
<td>$0.01287</td>
<td>$0.03611</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02325</td>
<td>$0.01287</td>
<td>$0.03611</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.07119</td>
<td>$0.01334</td>
<td>$0.08452</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.07119</td>
<td>$0.01334</td>
<td>$0.08452</td>
</tr>
<tr>
<td><strong>TOU-GS-2-A</strong></td>
<td>TOU-GS2A, TOU-GS2A-AE, TOU-GS2A-AEC, TOU-GS2A-C</td>
<td>Summer On-Peak</td>
<td>$0.31873</td>
<td>$0.01955</td>
<td>$0.33828</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.07746</td>
<td>$0.01720</td>
<td>$0.09466</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.07746</td>
<td>$0.01720</td>
<td>$0.09466</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03459</td>
<td>$0.01678</td>
<td>$0.05136</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03459</td>
<td>$0.01678</td>
<td>$0.05136</td>
</tr>
<tr>
<td><strong>TOU-GS-2-B</strong></td>
<td>TOU-GS2B, TOU-GS2B-AE, TOU-GS2B-AEC, TOU-GS2B-C, TOU-GS2B-S, TOU-GS2B-SAE</td>
<td>Summer On-Peak</td>
<td>$0.07617</td>
<td>$0.01720</td>
<td>$0.09337</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03813</td>
<td>$0.01689</td>
<td>$0.05402</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.03813</td>
<td>$0.01689</td>
<td>$0.05402</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03459</td>
<td>$0.01678</td>
<td>$0.05137</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.03459</td>
<td>$0.01678</td>
<td>$0.05137</td>
</tr>
<tr>
<td><strong>TOU-GS-2-R</strong></td>
<td>TOU-GS2R, TOU-GS2R-AE</td>
<td>Summer On-Peak</td>
<td>$0.18527</td>
<td>$0.01720</td>
<td>$0.20247</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.18527</td>
<td>$0.01720</td>
<td>$0.20247</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.18527</td>
<td>$0.01720</td>
<td>$0.20247</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.18527</td>
<td>$0.01720</td>
<td>$0.20247</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.18527</td>
<td>$0.01720</td>
<td>$0.20247</td>
</tr>
<tr>
<td>CPA Rate Schedule</td>
<td>SCE Equivalent Rate Schedule</td>
<td>Unit/Period</td>
<td>CPA Proposed Generation Rate</td>
<td>SCE Surcharged</td>
<td>CPA Proposed Generation Rate Plus Surcharges</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------------------</td>
<td>-------------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>CPA Proposed Generation Rate</td>
<td>SCE Surcharged</td>
<td>CPA Proposed Generation Rate Plus Surcharges</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge ($/kWh)</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.31873</td>
<td>$0.01955</td>
<td>$0.33828</td>
</tr>
<tr>
<td>TOU-GS-2-PRI-B</td>
<td>TOU-GS2B, TOU-GS2B-AE, TOU-GS2B-AEC, TOU-GS2B-C, TOU-GS2B-S, TOU-GS2B-SAE</td>
<td>Summer Mid-Peak</td>
<td>$0.07746</td>
<td>$0.01720</td>
<td>$0.09466</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.01672</td>
<td>$0.01660</td>
<td>$0.03332</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.001678</td>
<td>$0.01678</td>
<td>$0.01846</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.002372</td>
<td>$0.01667</td>
<td>$0.004039</td>
</tr>
<tr>
<td>TOU-GS-2-PRI-B</td>
<td>TOU-GS2B, TOU-GS2B-AE, TOU-GS2B-AEC, TOU-GS2B-C, TOU-GS2B-S, TOU-GS2B-SAE</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.07687</td>
<td>$0.01719</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03683</td>
<td>$0.01680</td>
<td>$0.05363</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.01543</td>
<td>$0.01659</td>
<td>$0.03202</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03329</td>
<td>$0.01676</td>
<td>$0.05006</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02243</td>
<td>$0.01666</td>
<td>$0.03909</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$3.26</td>
<td>$0.03</td>
<td>$3.29</td>
</tr>
<tr>
<td>TOU-GS-3-A</td>
<td>TOU-GS3A, TOU-GS3A-AE</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.29572</td>
<td>$0.01650</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.07507</td>
<td>$0.01435</td>
<td>$0.08941</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02302</td>
<td>$0.01382</td>
<td>$0.03684</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03637</td>
<td>$0.01397</td>
<td>$0.05034</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02621</td>
<td>$0.01387</td>
<td>$0.03909</td>
</tr>
<tr>
<td>CPA Rate Schedule</td>
<td>SCE Equivalent Rate Schedule</td>
<td>Unit/Period</td>
<td>CPA Proposed Generation Rate</td>
<td>SCE Surcharged</td>
<td>CPA Proposed Generation Rate Plus Surcharges</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------</td>
<td>-------------</td>
<td>-----------------------------</td>
<td>----------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>TOU-GS3-PRI-A</td>
<td>TOU-GS3A, TOU-GS3A-AE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Energy Charge ($/kWh)</td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.07952</td>
<td>$0.01391</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.07302</td>
<td>$0.01380</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02417</td>
<td>$0.01385</td>
</tr>
<tr>
<td>TOU-GS3-B</td>
<td>TOU-GS3B, TOU-GS3B-C, TOU-GS3-B-S, TOU-GS3-BAES, TOU-GS3-B-AE</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.08082</td>
<td>$0.01440</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04100</td>
<td>$0.01401</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02102</td>
<td>$0.01380</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02621</td>
<td>$0.01387</td>
</tr>
<tr>
<td>TOU-GS3-PRI-B</td>
<td>TOU-GS3B, TOU-GS3B-C, TOU-GS3-B-S, TOU-GS3-BAES, TOU-GS3-B-AE</td>
<td>Demand Charge ($/kW)</td>
<td>Summer On-Peak</td>
<td>$18.26</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$3.30</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$3.90</td>
<td></td>
</tr>
<tr>
<td>TOU-GS3-B</td>
<td>TOU-GS3B, TOU-GS3B-C, TOU-GS3-B-S, TOU-GS3-BAES, TOU-GS3-B-AE</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.29572</td>
<td>$0.01650</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.07502</td>
<td>$0.01343</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02102</td>
<td>$0.01382</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02621</td>
<td>$0.01387</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02621</td>
<td>$0.01387</td>
</tr>
</tbody>
</table>
# Proposed Rates - 36% Renewable Base Rate

## Community Power Alliance

<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOU-GS3-R-PRI</td>
<td>TOU-GS3-R</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.29367</td>
<td>$0.01848</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.07302</td>
<td>$0.01433</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.01897</td>
<td>$0.01380</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03432</td>
<td>$0.01395</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02417</td>
<td>$0.01385</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOU-GS3-SOP</td>
<td>TOU-GS3-R</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.12984</td>
<td>$0.01488</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.05786</td>
<td>$0.01418</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.01626</td>
<td>$0.01377</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03267</td>
<td>$0.01398</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOU-PA-2-A</td>
<td>TOU-PA2A, TOU-PA2A-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.30109</td>
<td>$0.01518</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.06720</td>
<td>$0.01246</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02701</td>
<td>$0.01246</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03796</td>
<td>$0.01261</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02773</td>
<td>$0.01251</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOU-PA-20-PRI-A</td>
<td>TOU-PA2A, TOU-PA2A-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.29918</td>
<td>$0.01518</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.06560</td>
<td>$0.01246</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02650</td>
<td>$0.01246</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03603</td>
<td>$0.01259</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Proposed Rates - 36% Renewable Base Rate

<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharge</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOU-PA-2-B</td>
<td>TOU-PA2B, TOU-PA2B-S</td>
<td>Summer On-Peak</td>
<td>$0.10030</td>
<td>$0.01327</td>
<td>$0.11356</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04359</td>
<td>$0.01266</td>
<td>$0.05625</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02761</td>
<td>$0.01251</td>
<td>$0.03993</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03796</td>
<td>$0.01261</td>
<td>$0.05057</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02771</td>
<td>$0.01252</td>
<td>$0.03993</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02645</td>
<td>$0.01255</td>
<td>$0.03899</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$11.39</td>
<td>$0.11</td>
<td>$11.51</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$2.06</td>
<td>$0.02</td>
<td>$2.08</td>
</tr>
<tr>
<td>TOU-PA-2-PRI-8</td>
<td>TOU-PA2B, TOU-PA2B-S</td>
<td>Summer On-Peak</td>
<td>$0.09903</td>
<td>$0.01320</td>
<td>$0.11223</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04232</td>
<td>$0.01265</td>
<td>$0.05497</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02123</td>
<td>$0.01245</td>
<td>$0.03368</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03667</td>
<td>$0.01260</td>
<td>$0.04927</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02645</td>
<td>$0.01254</td>
<td>$0.03899</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02645</td>
<td>$0.01254</td>
<td>$0.03899</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$11.38</td>
<td>$0.11</td>
<td>$11.49</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$1.82</td>
<td>$0.02</td>
<td>$1.84</td>
</tr>
<tr>
<td>TOU-PA-2-SOP-1</td>
<td>TOU-PA2-SOP1</td>
<td>Summer On-Peak</td>
<td>$0.09905</td>
<td>$0.01321</td>
<td>$0.11224</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04232</td>
<td>$0.01265</td>
<td>$0.05497</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02123</td>
<td>$0.01245</td>
<td>$0.03368</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off-Peak</td>
<td>$0.04327</td>
<td>$0.01266</td>
<td>$0.05593</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$19.35</td>
<td>$0.19</td>
<td>$19.54</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$2.06</td>
<td>$0.02</td>
<td>$2.08</td>
</tr>
<tr>
<td>TOU-PA-2-SOP-2</td>
<td>TOU-PA2-SOP2</td>
<td>Summer On-Peak</td>
<td>$0.09905</td>
<td>$0.01321</td>
<td>$0.11224</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04359</td>
<td>$0.01266</td>
<td>$0.05625</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02761</td>
<td>$0.01251</td>
<td>$0.03993</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03796</td>
<td>$0.01261</td>
<td>$0.05057</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02771</td>
<td>$0.01252</td>
<td>$0.03993</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02645</td>
<td>$0.01255</td>
<td>$0.03899</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$16.76</td>
<td>$0.16</td>
<td>$16.92</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$2.06</td>
<td>$0.02</td>
<td>$2.08</td>
</tr>
</tbody>
</table>

---

### Notes
- TOU-PA-2-B, TOU-PA2B, TOU-PA2B-S
- TOU-PA-2-PRI-8, TOU-PA2B, TOU-PA2B-S
- TOU-PA-2-SOP-1, TOU-PA2-SOP1
- TOU-PA-2-SOP-2, TOU-PA2-SOP2
- TOU-PA-3-SOP-1, TOU-PA3-SOP1
<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.06225</td>
<td>$0.00856</td>
<td>$0.07080</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03352</td>
<td>$0.00827</td>
<td>$0.04179</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02260</td>
<td>$0.00817</td>
<td>$0.03077</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off-Peak</td>
<td>$0.03814</td>
<td>$0.00832</td>
<td>$0.04645</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Super Off-Peak</td>
<td>$0.02413</td>
<td>$0.00818</td>
<td>$0.03231</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Super Off-Peak</td>
<td>$0.02643</td>
<td>$0.00831</td>
<td>$0.03474</td>
</tr>
<tr>
<td>TOU-PA-3-SOP-1-PRI</td>
<td></td>
<td>Energy Charge (S/kWh)</td>
<td>$0.06100</td>
<td>$0.00854</td>
<td>$0.06954</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.03227</td>
<td>$0.00826</td>
<td>$0.04053</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02135</td>
<td>$0.00816</td>
<td>$0.02951</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Off-Peak</td>
<td>$0.03689</td>
<td>$0.00831</td>
<td>$0.04520</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Super Off-Peak</td>
<td>$0.02288</td>
<td>$0.00817</td>
<td>$0.03105</td>
</tr>
<tr>
<td>TOU-PA-3-SOP-2</td>
<td></td>
<td>Energy Charge (S/kWh)</td>
<td>$0.23283</td>
<td>$0.01022</td>
<td>$0.24306</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.05808</td>
<td>$0.00855</td>
<td>$0.06663</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02433</td>
<td>$0.00818</td>
<td>$0.03250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02835</td>
<td>$0.00842</td>
<td>$0.03678</td>
</tr>
</tbody>
</table>
## Proposed Rates - 36% Renewable Base Rate

<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOU-PA-3-PRI-A</td>
<td>TOU-PA3B, TOU-PA3B-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge (S/kWh)</td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.23118</td>
<td>$0.01021</td>
<td>$0.24139</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.05642</td>
<td>$0.00850</td>
<td>$0.06492</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02265</td>
<td>$0.00817</td>
<td>$0.03082</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03691</td>
<td>$0.00811</td>
<td>$0.04502</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02790</td>
<td>$0.00821</td>
<td>$0.03611</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02790</td>
<td>$0.00821</td>
<td>$0.03611</td>
</tr>
<tr>
<td>TOU-PA-3-B</td>
<td>TOU-PA3B, TOU-PA3B-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge (S/kWh)</td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.09035</td>
<td>$0.00883</td>
<td>$0.09918</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04264</td>
<td>$0.00836</td>
<td>$0.05100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02431</td>
<td>$0.00818</td>
<td>$0.03250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03860</td>
<td>$0.00833</td>
<td>$0.04693</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02790</td>
<td>$0.00821</td>
<td>$0.03611</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02790</td>
<td>$0.00821</td>
<td>$0.03611</td>
</tr>
<tr>
<td>TOU-PA-3-B</td>
<td>TOU-PA3B, TOU-PA3B-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge (S/kWh)</td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.08910</td>
<td>$0.00882</td>
<td>$0.09792</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.04139</td>
<td>$0.00835</td>
<td>$0.04974</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02431</td>
<td>$0.00818</td>
<td>$0.03250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03735</td>
<td>$0.00831</td>
<td>$0.04566</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02790</td>
<td>$0.00822</td>
<td>$0.03632</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02790</td>
<td>$0.00822</td>
<td>$0.03632</td>
</tr>
<tr>
<td>TOU-8-SEC-B</td>
<td>TOU-8-B, TOU-8-B-APSE, TOU-8-B-S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge (S/kWh)</td>
<td></td>
<td>Summer On-Peak</td>
<td>$0.06490</td>
<td>$0.01252</td>
<td>$0.07742</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03993</td>
<td>$0.01228</td>
<td>$0.05221</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02287</td>
<td>$0.01211</td>
<td>$0.03498</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter On-Peak</td>
<td>$0.03822</td>
<td>$0.01226</td>
<td>$0.05047</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.02802</td>
<td>$0.01216</td>
<td>$0.04018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02802</td>
<td>$0.01216</td>
<td>$0.04018</td>
</tr>
</tbody>
</table>

---

**Note:** The table above outlines the proposed rates for different rate schedules, comparing them to the SCE equivalent rate schedules with surcharges. Each rate schedule is categorized by the type of energy charge and period, such as summer on-peak, summer mid-peak, and winter mid-peak.

---

**Page 191**
<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharge</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOU-8-PRI-B</td>
<td>TOU-8-B, TOU-8-B-APSE, TOU-8-B-S</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.06471</td>
<td>$0.01365</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03967</td>
<td>$0.01140</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02933</td>
<td>$0.01090</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03806</td>
<td>$0.01139</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02807</td>
<td>$0.01129</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Demand Charge ($/kW)</td>
<td>Summer On-Peak</td>
<td>$20.28</td>
<td>$0.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$3.83</td>
<td>$0.04</td>
</tr>
<tr>
<td>TOU-8-SUB-B</td>
<td>TOU-8-B, TOU-8-B-APSE, TOU-8-B-S, TOU-8-S</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.06173</td>
<td>$0.01110</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.03867</td>
<td>$0.01088</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02763</td>
<td>$0.01072</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03752</td>
<td>$0.01076</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02792</td>
<td>$0.01077</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Demand Charge ($/kW)</td>
<td>Summer On-Peak</td>
<td>$20.00</td>
<td>$0.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$3.60</td>
<td>$0.04</td>
</tr>
<tr>
<td>TOU-8-SUB-R</td>
<td>TOU-8-R</td>
<td>Energy Charge ($/kWh)</td>
<td>Summer On-Peak</td>
<td>$0.27021</td>
<td>$0.01314</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$0.06512</td>
<td>$0.01110</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02276</td>
<td>$0.01072</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03752</td>
<td>$0.01087</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02792</td>
<td>$0.01077</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Demand Charge ($/kW)</td>
<td>Summer On-Peak</td>
<td>$20.00</td>
<td>$0.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Mid-Peak</td>
<td>$3.60</td>
<td>$0.04</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Summer Off-Peak</td>
<td>$0.02276</td>
<td>$0.01072</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Mid-Peak</td>
<td>$0.03752</td>
<td>$0.01087</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Winter Off-Peak</td>
<td>$0.02792</td>
<td>$0.01077</td>
</tr>
<tr>
<td>TCA</td>
<td>TCA</td>
<td>Energy Charge ($/kWh)</td>
<td>All Energy</td>
<td>$0.05225</td>
<td>$0.00946</td>
</tr>
</tbody>
</table>
## Community Power Alliance

**Proposed Rates - 36% Renewable Base Rate**

<table>
<thead>
<tr>
<th>CPA Rate Schedule</th>
<th>SCE Equivalent Rate Schedule</th>
<th>Unit/Period</th>
<th>CPA Proposed Generation Rate</th>
<th>SCE Surcharged</th>
<th>CPA Proposed Generation Rate Plus Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Green Rate Offerings</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>50% Renewable Adder</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge ($/kWh)</td>
<td></td>
<td>All Energy</td>
<td>0.00083</td>
<td>0.00000</td>
<td>0.00083</td>
</tr>
<tr>
<td><strong>100% Renewable Adder</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Charge ($/kWh)</td>
<td></td>
<td>All Energy</td>
<td>0.01500</td>
<td>0.00000</td>
<td>0.01500</td>
</tr>
</tbody>
</table>
To: Los Angeles Community Choice Energy Board of Directors  
From: LACCE Staff  
Subject: Legislative and Regulatory Update  
Date: April 5, 2018  

Regulatory Issues

1. PCIA Review – R.17-06-026

Rulemaking Proceeding R.17-06-026 will review and revise the Power Charge Indifference Adjustment (PCIA) methodology for calculating exit fees owed by CCAs to their incumbent IOU. These fees are intended to cover the costs of power contracts that were stranded by CCA departure from bundled IOU service.

Testimony for this proceeding was due on 4/2/2018. Testimony submissions will serve as the first venue for parties to officially propose alternative methodologies and solutions. CalCCA was one of the parties that submitted testimony on behalf of CCA interests. CPA Board Chair and Staff have reviewed the CalCCA testimony during its development and believe there are several strong proposals. Going forward, evidentiary hearings will begin 5/7/2018 and the Administrative Law Judge is currently scheduled to issue a proposed decision in late July 2018.

2. Resource Adequacy R.17-09-020

The CPUC opened rulemaking proceeding 17-09-020 in September 2017 as part of a biennial compliance function to review and update Resource Adequacy (“RA”) rules for years 2019 and 2020. This cycle, the CPUC intends to address larger structural issues with the RA program and to address unresolved issues from Resolution E-4907 such as developing a cost allocation methodology for stranded one-year RA contracts.

Since the last CPA Board Meeting, parties have filed comments proposing changes to the RA procurement market and the requirements around the RA year-ahead process. CPA filed comments in partnership with Western Community Energy and Desert Community Energy. The Proposed Decision is still scheduled for June 2018.
3. Petition for Modification of Decision 12-12-036 (R.12-02-009)

On January 30, 2018, PG&E, SCE, and SDG&E (“IOUs”) filed a joint petition to modify a 2012 CPUC decision (D.12-12-036 in proceeding R.12-12-009) that restricts IOU marketing on CCAs and establishing an IOU “Code of Conduct” and implementing Senate Bill 790 (Leno, October 2011). In their Petition for Modification (“PFM”), the IOUs argue that restricting IOU communication with local governments and the press regarding community choice aggregation is an infringement on their first amendment rights. In addition, the IOUs argue that this modification to the Code of Conduct would be in the public interest to ensure that local governments are ‘better informed of the risks’ of CCA. CalCCA has hired a high-profile legal team to address these issues and the CPA team has supported these efforts by providing evidence of CPA’s careful process for reviewing its aggregation program throughout its many jurisdictions. We continue to await a Scoping Memo from the presiding Administrative Law Judge Kimberly H. Kim.

Legislative Issues

Over the last month, CPA Board Members and staff have held meetings with two California State legislators: (1) the Speaker of the California State Assembly Anthony Rendon, and (2) California State Assembly Member Al Muratsuchi. These meetings served as an opportunity to educate the legislators about CPA’s program, new phasing strategy and plans for the future, as well as to ensure they were aware of the CCA presence within their districts.

CPA Board members and staff continue to monitor legislation in Sacramento through informal contacts and through CalCCA’s robust legislative tracking system. CPA intends to hire a Director of Legislative and Regulatory Affairs in the coming months.
Item VI – Executive Director Report

To: Clean Power Alliance Board of Directors
From: Ted Bardacke, Executive Director
Subject: Monthly Update
Date: April 5, 2018

**LACCE Membership Update**

With the addition of Oxnard and the City of Ventura, CPA now has its full complement of 31 members for 2018 and 2019 electricity load and customers. The CPUC Certified Implementation Plan Amendment #2 (for the seven cities that joined in Jan-Feb 2018) on March 28.

Additional cities that choose to join CPA for 2020 load will need to approve JPA documents by December 31, 2018. Staff intends to facilitate a discussion about outreach and recruitment strategy for additional members over the summer.

Board Members, Alternates and Member Staff are reminded that orientations remain available and can be scheduled in your cities at your convenience. Contact Bill Carnahan to schedule those orientations.

**Community Advisory Committee**

At the January 17th Board meeting, staff presented a Community Advisory Committee (CAC) straw proposal for Board consideration. At that meeting the Board voted to defer a decision on the Community Advisory Committee until the Executive Director came on board and additional expected cities formally joined CPA. Subsequently, the Board formed an Ad Hoc Community Advisory Committee Development Committee to work with staff to develop a revised proposal.

The Ad Hoc Committee has received some stakeholder input and developed some principles about how the CAC should be structured. These basic principles for the CAC include:

- be composed of 15 people
- be regionally and community-focused in terms of membership
- have 3-year terms
- rotate meeting locations each month to CPA regions
The Ad Hoc Committee will continue to work over the next month to solicit further input from Board members and local community members with the goal of presenting a full recommendation to the Board at its regular May 2 meeting.

**Phase 1 Operations**

**Overview**
CPA enrolled 1,985 Los Angeles County municipal accounts on their respective meter read dates between 2/1/2018 and 3/1/2018. Starting on 3/1/2018, these Phase 1 customers began receiving their first electric power invoices since becoming CPA customers. CPA expects to receive its first deposits from customers in the first week of April.

**Invoice Errors**
On 3/16/2018, CPA’s billing and data management consultant Calpine discovered that SCE had sent out the first CPA customer bills without CPA’s generation charges. The error was traced to a malfunction in SCE’s billing system that caused it to reject the CPA generation charge info that had been provided to them. In total, this error impacted 1,182 CPA Phase 1 customer invoices.

Calpine staff worked with SCE’s billing and IT teams throughout the weekend of 3/17/2018 to identify the problem in SCE’s system. On 3/19/2018, SCE confirmed they had resolved the issue and began sending invoices that included the correct CPA generation charges. On 3/27/2018, SCE confirmed they will process off-cycle invoices to customers that did not receive CPA generation charges.

**Missing Streetlight Usage Data**
Between 3/1/2018 and 3/28/2018, SCE did not provide energy usage reports for 169 unmetered streetlight accounts that are owned by Los Angeles County and enrolled in Clean Power Alliance. These streetlights account for roughly a third of CPA’s expected Phase 1 load. Calpine reported each of these accounts as Overdue for Usage to SCE and escalated the issue internally with SCE.

SCE identified the issue in their billing system on 3/28/2018, and provided Calpine with the missing usage reports. Calpine submitted the associated bills to SCE on 3/29/2018 and expects the delayed bills to be issued 4/2/2018.

**Phase 2 Launch Planning**
CPA’s Phase 2 customer enrollments will extend service to non-residential accounts in unincorporated Los Angeles County as well as the Cities of Rolling Hills Estates and South Pasadena. Approximately 30,000 customers will be offered service. Customer enrollments will begin on June 25th, 2018 and are expected to take one month to complete.
In addition to power procurement and rate setting, staff is currently focused on several key tasks, including:

- **Customer Noticing:** CCA’s are required to notice customers of the planned change from IOU to CCA service four times during the enrollment period. The first two notices, called “pre-enrollment notices,” are sent within 60 and 30 days of the customer’s switch-over date. Following customer switch-over, customers must then receive two “post-enrollment notices” in the following 30 and 60 days. CPA’s communications consultant, The Energy Coalition (TEC), is designing these customer notices for Phase 2 customers. The first pre-enrollment notice will be mailed to CPA Phase 2 customers on 4/30/2018.

- **Customer Service Resources:** When customer notices are first received by customers starting on 5/1/2018, CPA will have customer service resources available to handle customer inquiries. Calpine and TEC are currently preparing CPA’s call center, training customer service representatives and programming the Interactive Voice Response system (IVR). In addition, TEC is redesigning and updated CPA’s website to be more engaging and comprehensive for CPA customers during the pre-enrollment period. This website will include links allowing customers to change their power product selection (either opting up to a more renewable product or opting-down to a cheaper product) as well as to opt-out and return to SCE service should they do so. These links will connect directly with Calpine’s Customer Relationship Management system.

- **Large and Key Customer Outreach:** The change in phasing strategy significantly changed the customer and load profile of the key accounts for Phase 2. Staff and a specialized consultant are reviewing the new “Top 100” customers to design an outreach strategy with the intention of making direct customer contact with these key customers before pre-enrollment notices go out. Intends to make direct contact with large key customers in our service territory to introduce CPA.

**2019 Operational Planning**

During the month of April, staff will begin discussions with operational executives at Southern California Edison about the expected transition of nearly one million customers throughout the first half of 2019, the largest customer transition ever attempted in California. These discussions will identify any key operational risks that must be considered when finalizing the exact 2019 phasing schedule. These issues will be added to the financial analysis – now being fine-tuned with updated power pricing – to use when developing a final 2019 phasing plan for Board consideration.

**Credit Agreement**

On March 29, CPA’s credit line with River City Bank was approved by the bank’s loan committee. Staff and outside attorneys will now work on loan documentation with River City Bank in order to have documents ready for Board consideration at its May 2 Board
meeting. Staff intends to engage the Finance Committee to review the loan documents prior to presenting to the Board.

Staffing/Hiring

John Zeller joined CPA in early March at Interim CFO. John has been CFO and Controller for publicly listed companies in manufacturing, aerospace and healthcare as well as worked in start-up environments.

Interviews will be conducted in April for the following positions:

- Director, Power Planning and Procurement
- Director, Legislative and Regulatory Affairs
- Director, Technology Integration and Data Analytics
- Community Development Manager

Contracts Executed Under Executive Director Delegated Authority

Denise Tyrrell was contracted to assist with CPUC relations for a not-to-exceed amount of $25,200. Denise is based in San Francisco and is the CPUC’s former chief representative in Southern California.

Sustento Group was contracted to assist with large and key customer outreach for a not-to-exceed amount of $10,000. Sustento runs the LA Better Buildings Challenge and specializes in marketing energy information to real estate companies and other large energy users.

Steven Hall of Troutman Sanders law firm was contracted to provide legal services related to energy contracting and lock-box creditor agreements for a not-to-exceed amount of $50,000. Steve has worked with several CCAs throughout California in their start-up phases.

Charles Wolf of Nixon Peabody law firm was contracted to provide legal services related to the River City Bank credit agreement for a not-to-exceed amount of $20,000. Chuck specializes in JPA financial agreements and has CCA experience.

Peter Marx has been named Special Advisor for Technology and Cyber-Security. This is an unpaid position. Peter has been a Vice President at both GE Digital and Qualcomm Labs and was Chief Technology Officer for Mayor Eric Garcetti.

Conferences/Sponsorships/Grants

CPA is a lead sponsor of the annual Business of Local Energy Symposium in Sacramento June 4 -5. In conjunction with this sponsorship, several conference passes will be made available to board members who wish to attend.