

**ATTENTION: DCE VOTING MEMBERS WILL RECEIVE A UNIQUE PANELIST LINK BY EMAIL. PLEASE USE THIS LINK TO PARTICIPATE IN THIS MEETING.**



## **DESERT COMMUNITY ENERGY BOARD MEETING AGENDA**

**Wednesday, September 28, 2022  
3:30 p.m.**

*Pursuant to Assembly Bill 361 and the findings made by the DCE Board, this meeting will only be conducted via video/teleconferencing.*

### **INSTRUCTIONS FOR PUBLIC PARTICIPATION**

**Online:**

<https://us02web.zoom.us/j/88667000257?pwd=MWFPCzVQcUZleTFHVldiSkJHUVNvUT09>

**Passcode: 792227**

**One tap mobile:**

US: +16699009128,,88667000257#

**By Phone:**

**Dial In #: +1 669 900 9128**

**Webinar ID: 886 6700 0257**

**Passcode: 792227**

This will provide listening access and ability to address the DCE Board when called upon.

**IF YOU ARE UNABLE TO CONNECT VIA DIAL IN OPTION, PLEASE CALL 760-346-1127**

Members of the public are encouraged to submit comment in connection with the Desert Community Energy meeting by email to: [cvag@cvag.org](mailto:cvag@cvag.org) by 5:00 p.m. on the day prior to the committee meeting. Comments intended to be read aloud into the record should be no more than 300 characters in length.

**THIS MEETING IS HANDICAPPED ACCESSIBLE.  
ACTION MAY RESULT ON ANY ITEMS ON THIS AGENDA.**

1. **CALL TO ORDER-** Chair Geoff Kors, Councilmember, City of Palm Springs

2. **ROLL CALL –**

A. **Member Roster**

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3. **AGENDA MODIFICATIONS (IF ANY)**

4. **PUBLIC COMMENTS ON AGENDA ITEMS**

Any person wishing to address the Desert Community Energy Board on items appearing on this agenda may do so at this time. Please limit comments to 3 minutes. At the discretion of the chair, additional public comment time and/or opportunities during the meeting may be granted.

5. **BOARD MEMBER / DIRECTOR COMMENTS**

6. **CONSENT CALENDAR**

A. **Approve Minutes from the July 18, 2022 Board Meeting**

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B. **Reaffirm that findings still exist, pursuant to Assembly Bill 361, and authorize continuation of remote teleconference/virtual meetings of Desert Community Energy**

P8

C. **Authorize the Chair to execute Amendment No. 1 to the Implementation and Management Services Agreement with the Coachella Valley Association of Governments, extending the existing staffing arrangement until October 30, 2027**

P9

D. **Authorize the updating of the signature cards and signatories for DCE investments and banking**

P11

E. **Adopt Resolution 2022-06, approving the 2021 Power Content Label**

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7. **DISCUSSION / ACTION**

A. **Master Power Purchase and Sale Agreement with Southern California Edison and Resource Adequacy Confirmation – David Freedman**

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**Recommendation:** Adopt Resolution No. 2022-07, approving a Master Power Purchase and Sale Agreement and Confirmation Letter for Resource Adequacy with Southern California Edison Company

B. **DCE Mid-term Reliability Procurement: Cape Generating Station 1 LLC Geothermal Project – David Freedman**

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**Recommendation:** Adopt Resolution 2022-08, approving a 15-year Renewable Power Purchase Agreement with Cape Generating Station 1 LLC, and authorizing the Executive Director and/or Legal Counsel to make minor modifications before execution of the agreement

**8. INFORMATION**

- |   |             |
|---|-------------|
| <b>A. Attendance Record</b>   | <b>P109</b> |
| <b>B. Unaudited Financial Report as of June 30, 2022</b>              | <b>P110</b> |
| <b>C. Unaudited Year-to-Year Financial Report as of June 30, 2022</b> | <b>P112</b> |

**9. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Any person wishing to address the Board on items not appearing on this agenda may do so at this time. Please limit comments to 2 minutes. At the discretion of the chair, additional public comment time and/or opportunities during the meeting may be granted.

**10. ANNOUNCEMENTS**

The next DCE meeting will be held October 17, 2022 at 3:00 p.m. via Zoom webinar.

**11. ADJOURNMENT**



## DESERT COMMUNITY ENERGY BOARD MEMBER ROSTER

Voting Members	Seat on Committee	Representative
City of Palm Desert	DCE Vice Chair	<b>Sabby Jonathan</b> Mayor Pro Tem <i>Alternate: Councilmember Kathleen Kelly</i>
City of Palm Springs	DCE Chair	<b>Geoff Kors</b> Councilmember <i>Alternate: Mayor Lisa Middleton</i>
DCE Staff		
Tom Kirk, Executive Director		
Kenyon Potter, Director of Energy & Sustainability		
Katie Barrows, Part-Time Interim Director		
David Freedman, Program Manager		
Liz Barnwell, Management Analyst		
Janice Reitman, Accounting Manager		

## **ITEM 6A**

### **Desert Community Energy Board Meeting Minutes July 18, 2022**



**Held via Zoom videoconference**

*The audio file for this meeting can be found at: <http://www.desertcommunityenergy.org>*

#### **1. CALL TO ORDER**

The meeting of the DCE Board was called to order by Chair Geoff Kors, City of Palm Springs, at 11:02 a.m. via Zoom videoconferencing, pursuant to Assembly Bill 361.

#### **2. ROLL CALL**

Roll call was taken, and it was determined that a quorum was present.

#### **Members Present**

Councilmember Geoff Kors, Chair  
Mayor Pro Tem Sabby Jonathan

#### **Agency**

City of Palm Springs  
City of Palm Desert

#### **3. AGENDA MODIFICATIONS (IF ANY)**

None.

#### **4. PUBLIC COMMENTS ON AGENDA ITEMS**

None.

#### **5. BOARD MEMBER / DIRECTOR COMMENTS**

Vice Chair Jonathan announced that the Palm Desert City Council is considering a comprehensive environmental policy and, at his request, the City is including a re-evaluation about the City having its municipal accounts launched in the 100 percent Carbon Free program. He also thanked Palm Springs for its leadership on the issue.

DCE Director Katie Barrows provided updates on the Board's request for comparative financial statements, which were in the packet. She also provided an update on finalizing the recent amendment to the River City agreement. Ms. Barrows indicated that the August DCE meeting may not be necessary. Finally, she noted that staff would be providing additional information on the cost allocation between Palm Springs and DCE, as requested by the Chair, at a future meeting.

Chair Kors encouraged additional public outreach to promote energy savings, including reminding the public to not use major appliances from 4 p.m. to 9 p.m. to assist with energy conservation.

## **6. CONSENT CALENDAR**

**IT WAS MOVED BY MAYOR PRO TEM JONATHAN AND SECONDED BY COUNCILMEMBER KORS TO:**

- A. Approve Minutes from the April 11, 2022 Board Meeting**
- B. Approve Minutes from the June 29, 2022 Board Meeting**
- C. Reaffirm that findings still exist, pursuant to Assembly Bill 361, and authorize continuation of remote teleconference/virtual meetings of Desert Community Energy**
- D. Adopt Policy No. 22-01 DCE Procurement Policy & Procedures**
- E. Approve the Voluntary Allocation Agreement with Southern California Edison in connection with its voluntary allocation of its Power Charge Indifference Adjustment Long-Term Renewable Energy Portfolio and authorize the Executive Director to execute the necessary documents**
- F. Authorize the Executive Director to negotiate and execute an agreement with MRW & Associates, LLC for a not-to-exceed amount of \$65,000, authorizing work on the 2022 Integrated Resource Plan as required by the California Public Utilities Commission**

**THE MOTION CARRIED WITH 2 AYES.**

**Mayor Pro Tem Jonathan  
Councilmember Kors**

**Aye  
Aye**

## **7. DISCUSSION / ACTION**

- A. Update on statewide legislation impacting CCAs – Sean MacNeil, CalCCA Director of Legislative Affairs**

Program Manager David Freedman introduced Sean MacNeil, who presented information on a wide range of statewide issues, including the state budget and legislative issues.

A brief member discussion ensued.

This was an informational item and no action was taken.

- B. DCE Financial Outlook – Jaclyn Harr**

Ms. Harr of The Energy Authority provided a presentation on DCE's financial outlook for the fiscal year.

This was an informational item and no action was taken.

### **C. Update on DCE's Distributed Energy Resources Program – David Freedman**

Mr. Freedman presented the staff report and discussed next steps in the program. Member discussion ensued regarding potential liabilities. Staff was directed to provide additional information on this issue as soon as possible.

This was an informational item and no action was taken.

## **8. INFORMATION**

The following items were included in the agenda packet for members' information :

**A. Attendance Record**

**B. Unaudited Financial Report as of May 31, 2022**

**C. Unaudited Year-to-Year Financial Report as of May 31, 2022**

**D. Supplier Diversity Update**

**E. Legislative Update**

Vice Chair Jonathan commented on the informative and detailed financial reports and recognized the Finance staff for their efforts.

## **9. PUBLIC COMMENT ON NON-AGENDA ITEMS**

None.

## **10. ANNOUNCEMENTS**

The next **DCE meeting** will be held August 22, 2022 at 3:00 p.m. via Zoom webinar.

## **11. CLOSED SESSION – Chair Kors adjourned to closed session at 12:09 p.m.**

### **Conference with Legal Counsel – Anticipated Litigation**

Initiation of litigation pursuant to Government Code Section 54956.9(d)(4)

Number of potential cases: 1

Closed Session was adjourned to the regular meeting at 12:28 p.m. Glen Price, Legal Counsel, announced that no reportable action was taken.

## **12. ADJOURNMENT – David Freedman adjourned the meeting at 12:29 p.m.**

Respectfully submitted,

*Jennifer Nelson, Executive Assistant/Clerk*

## **ITEM 6B**

### **Desert Community Energy Board September 28, 2022**



#### **STAFF REPORT**

**Subject:** Remote Teleconference/Virtual Meetings Pursuant to Assembly Bill 361

**Contact:** Erica Felci, Assistant Executive Director ([efelci@cvag.org](mailto:efelci@cvag.org))

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**Recommendation:** Reaffirm that findings still exist, pursuant to Assembly Bill 361, and authorize continuation of remote teleconference/virtual meetings of Desert Community Energy

**Background:** All meetings of the Desert Community Energy Board and its Community Advisory Committee are subject to the Ralph M. Brown Act (Gov. Code §§ 54950 *et seq.*), and must be open and public so that any member of the public may attend and participate in the meetings.

Starting in March 2020, Governor Newsom issued a series of executive orders aimed at preventing the spread of COVID-19, as it was determined that social distancing was an important factor addressing the pandemic. Among these were Executive Orders N-25-20, N-29-20 and N-35-20 (collectively, the “Brown Act Orders”) that waived the teleconferencing requirements of the Brown Act to allow legislative bodies to meet virtually.

On June 11, 2021, the Governor issued Executive Order N-08-21 to begin winding down some of the prior measures that were adopted to respond to COVID-19. Notably, this order rescinds the Brown Act Orders, effective September 30, 2021. On September 16, 2021, Governor Newsom signed Assembly Bill 361 (AB 361), which effective October 1, 2021, allows legislative bodies to meet virtually provided the legislative body makes specific findings.

***Specific Findings Required under AB 361:***

The DCE Board has previously made the following findings pursuant to AB 361:

1. A statewide state of emergency is currently in place;
2. State or local officials have imposed or recommended measures to promote social distancing in connection with COVID-19; and
3. Meeting in person would present imminent risks to the health or safety of attendees.

With this item, staff is recommending the DCE Board confirm these findings still exist and continue virtual meetings, pursuant to AB 361.

**Fiscal Analysis:** There are no additional costs to DCE for hosting virtual meetings.



## **ITEM 6C**

### Desert Community Energy Board September 28, 2022



#### **STAFF REPORT**

**Subject:**       **Staffing Agreement Between DCE and the Coachella Valley Association of Governments**

**Contact:**       Erica Felci, Assistant Executive Director ([efelci@cvag.org](mailto:efelci@cvag.org))

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**Recommendation:** Authorize the Chair to execute Amendment No. 1 to the Implementation and Management Services Agreement with the Coachella Valley Association of Governments, extending the existing staffing arrangement until October 30, 2027

**Background:** Desert Community Energy (DCE) is community choice energy program that started in 2017 to provide residents and businesses with a choice in electricity service by procuring cleaner, greener electricity, reducing greenhouse gas emissions and investing in locally generated power sources. DCE is a joint powers authority is comprised of the Cities of Palm Springs and Palm Desert, and DCE launched service in the City of Palm Springs in April 2020.

The initial planning efforts for DCE were spearheaded by the Coachella Valley Association of Governments, with direction from its Executive Committee and Energy and Environmental Resources Committee. When the DCE JPA formed in 2017, a working group was formed to look at various governance structures. It was recommended that DCE follow the model that has proven successful for the Coachella Valley Conservation Commission (CVCC), which uses CVAG for its staff, and contract with CVAG to provide administrative and staffing services. The original agreement was approved by both the CVAG Executive Committee and the DCE Board of Directors in 2017, providing authority for CVAG to administer the program to get the program for a period of up to five years. Staff support includes meeting coordination, support to the board, oversight of consultants, and coordination of CCA implementation. Additionally, CVAG staff provide administrative support and accounting services including preparation of the budget, oversight of the annual audit, and management of the various DCE funds. Of the CVAG employees providing support for the CCA program, each only spend part of their time on the CCA program. DCE reimburses CVAG for all staff time incurred as well as non-employee costs incurred by CVAG while performing the services, such as supplies, legal services, consultant services and equipment.

The staffing agreement runs to October 30, 2022. DCE staff is recommending a five-year extension to the agreement, with the same termination clause that allows for the agreement to be terminated at any time by either party with six-month written notice.

Due to the timing of the agencies' meetings, the agreement was being presented for approval by the CVAG Executive Committee, scheduled to meet on September 26, 2022, on the condition that their approval was contingent on DCE's endorsement.

**Fiscal Analysis:** The Agreement allows CVAG to invoice DCE based upon actual staff time spent plus allocated overhead rates not to exceed the rates paid by CVAG. In fiscal year 2022/23 budget, it is anticipated that the DCE reimbursement to CVAG will total \$756,237.

**Attachments:** Amendment No. 1 to the CVAG-DCE Implementation and Management Services Agreement

**AMENDMENT NUMBER ONE**  
**to the**  
**DESERT COMMUNITY ENERGY**  
**SERVICES CONTRACT**  
**for the**  
**Implementation and Management Services**

This **AMENDMENT NUMBER ONE** is made and entered into this 28<sup>th</sup> day of September 2022, by and between the **Coachella Valley Association of Governments**, a California joint powers agency (**CVAG**), and **DESERT COMMUNITY ENERGY (DCE)**, and is made with reference to the following background facts and circumstances. All other terms and conditions shall remain the same as stated in the original Agreement date October 30, 2017 for Implementation and Management Services.

1. **This Amendment Number One extends the original five-year term of the contract for an additional five-year term to October 30, 2027, which may be terminated at any time by either party giving the other party six (6) months prior written notice.**

**IN WITNESS WHEREOF**, the parties hereto have caused this **Amendment Number One** to be executed by their duly authorized representatives on this date:

**COACHELLA VALLEY ASSOCIATION OF  
GOVERNMENTS**

**DESERT COMMUNITY ENERGY**

By: \_\_\_\_\_  
Steven Hernandez, Chair

By: \_\_\_\_\_  
Geoff Kors, Chair

## **ITEM 6D**

Desert Community Energy Board  
September 28, 2022



### **STAFF REPORT**

**Subject:** Authorization to Update Signature Cards

**Contact:** Claude T. Kilgore, Director of Finance/ Administration ([ckilgore@cvag.org](mailto:ckilgore@cvag.org))

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**Recommendation:** Authorize the updating of the signature cards and signatories for DCE investments and banking

**Background:** On occasion, usually due to a change in the Chair and/or employee turnover, DCE seeks authorization through Coachella Valley Association of Governments' employees (as authorized in JPA and contracted by DCE for staffing) to update the appropriate signatories and signature cards for DCE investments. This request supersedes any prior Board action related to the matter.

Staff is recommending such action be taken to address the changes in the DCE Board that will occur after the upcoming municipal elections. Additionally, CVAG has hired a new Director of Energy & Sustainability who will replace the director currently providing staff signatures. All transactions require dual approval with transactions over \$1,000,000 requiring three approvers.

With the Board's approval of the staff recommendation, the signature cards will be updated as follows:

1) Bank Signature Cards to the following CVAG employees and DCE Chair:

<b>Name</b>	<b>Title</b>	<b>Type</b>
New DCE Chair (as named in future Board action)	DCE Chair	New
Tom Kirk	Executive Director	Existing
Joanna Stueckle	Management Analyst	Existing
Claude T. Kilgore	Director of Finance/Administration	Existing
Katie Barrows	Director	Remove
Kenyon Potter	Director of Energy & Sustainability	New

**Fiscal Analysis:** There is no cost to DCE for this action.

## ITEM 6E

### Desert Community Energy Board September 28, 2022



#### STAFF REPORT

**Subject:** 2021 Annual Power Content Label

**Contact:** Liz Barnwell, Management Analyst ([ebarnwell@cvaq.org](mailto:ebarnwell@cvaq.org))

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**Recommendation: Adopt Resolution 2022-06, approving the 2021 Power Content Label**

**Background:** All retail sellers of electricity, including Community Choice Energy (CCA) providers such as DCE, are required by the California Public Utilities Code to disclose “accurate, reliable, and simple-to-understand information on the sources of energy” that are delivered to their customers each year. DCE is required to submit an annual Power Content Label to the California Energy Commission (CEC) by September 30 of each year.

In June 2022, the DCE Board adopted 2022-03, approving the 2021 Power Source Disclosure (PSD) Annual Report and associated 2021 Power Content Labels for Desert Saver and Carbon Free products. Since filing the 2021 Power Source Disclosure Annual Report, the CPUC has created a different format and requested additional information for the 2021 Power Content Label for a filing that is due September 30. The 2021 Power Content Label, shown below, will be posted on the CEC website and has already been posted on the DCE website. Upon Board approval, the 2021 Power Content Label information will also be mailed to all DCE customers.

Staff recommends that the Board adopt Resolution 2022-06 approving DCE’s 2021 Power Content Label. The Resolution also confirms that the Board attests to the veracity of the data in the Power Content Label. Adoption of the resolution enables DCE to comply with the CEC regulations implementing SB 1305 (California Code of Regulations, Title 20, Article 5, Sections 1391 to 1394).

#### *Summary of 2021 Power Content Label*

As shown in the 2021 Power Content Label below, DCE provided *Desert Saver* customers with an energy supply including 2.1% Renewable Portfolio Standard (RPS) eligible renewable energy from solar, wind, small hydropower and other renewable resources. Unspecified power – electricity that has been purchased through open market transactions and is not traceable to a specific generation source – constituted 26.9% of the *Desert Saver* energy supply, and the remainder was from large hydropower facilities (71%). DCE provided 100% carbon free energy to *Carbon Free* customers, including 35.8% RPS eligible renewable energy purchased from solar, wind, and small hydropower resources. The remaining carbon free energy was purchased from large hydropower facilities (64.2%). Based on staff’s review of available data, the information presented in the 2021 Power Content Label was determined to be accurate.

**Fiscal Analysis:** Adoption of Resolution 2022-06 does not result in any financial impact to DCE.

**Attachments:**

1. Resolution 2022-06 approving 2021 Power Content Label
2. 2021 Power Content Label for the Desert Saver and Carbon Free Products

**RESOLUTION NO. 2022-06**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
DESERT COMMUNITY ENERGY  
APPROVING AND ATTESTING TO THE VERACITY OF THE 2021  
POWER CONTENT LABEL FOR THE DESERT SAVER PRODUCT AND  
CARBON FREE PRODUCT**

A. Desert Community Energy (DCE) is a joint powers authority established on October 30, 2017 for the purpose of implementing community choice aggregation programs under Public Utilities Code Section 366.2.0.

B. Senate Bill 1305 was adopted in 1997, establishing an Electricity Generation Source Disclosure Program ("Power Source Disclosure Program"), which requires retail suppliers of electricity to disclose to their customers each year the sources of electricity delivered to customers in the previous year, and to annually submit a Power Content Label to the California Energy Commission ("CEC").

C. Desert Community Energy is a retail supplier of electricity as defined by the regulations issued by the CEC implementing the Power Source Disclosure Program (California Code of Regulations, Title 20, Article 5, Sections 1391 to 1394, "Power Source Disclosure Regulations").

D. The Power Source Disclosure Regulations were updated effective May 4, 2020, allowing the board of directors of a public agency providing electric services to approve, at a public meeting, the submission to the CEC of an attestation of the veracity of each product's 2021 Power Content Label.

E. DCE staff and consultants performed a detailed review of all power purchases completed for the 2021 calendar year; including an inventory of all renewable energy transfers within DCE's WREGIS account, and transaction records.

F. Pursuant to the Power Source Disclosure Regulations, the Board is required to attest to the veracity of the 2021 Power Content Label.

G. The Board desires to attest to the veracity of the 2021 Content Label so that all the required statements and attestations required by the Power Source Disclosure Regulations are contained in one resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF  
DESERT COMMUNITY ENERGY, AS FOLLOWS:**

1. Approves the submission and attests to the veracity of the attached 2021 Power Content Label for Desert Community Energy.

**PASSED AND ADOPTED** at a meeting of the Board of Directors of Desert Community Energy held on September 28, 2022.

ATTEST:

\_\_\_\_\_  
Geoff Kors, Chair  
Desert Community Energy

\_\_\_\_\_  
Tom Kirk, Secretary  
Desert Community Energy

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_ –

2021 POWER CONTENT LABEL						
Desert Community Energy						
<a href="https://desertcommunityenergy.org/about/key-documents/">https://desertcommunityenergy.org/about/key-documents/</a>						
Greenhouse Gas Emissions Intensity (lbs CO <sub>2</sub> e/MWh)			Energy Resources	DCE Desert Saver	DCE Carbon Free	2021 CA Power Mix
DCE Desert Saver	DCE Carbon Free	2021CA Utility Average	<b>Eligible Renewable<sup>1</sup></b>	<b>2.1%</b>	<b>35.8%</b>	<b>33.6%</b>
			Biomass & Biowaste	0.0%	0.0%	2.3%
			Geothermal	0.0%	0.0%	4.8%
			Eligible Hydroelectric	0.6%	9.5%	1.0%
			Solar	0.4%	7.4%	14.2%
			Wind	1.1%	18.9%	11.4%
			<b>Coal</b>	<b>0.0%</b>	<b>0.0%</b>	<b>3.0%</b>
			<b>Large Hydroelectric</b>	<b>71.0%</b>	<b>64.2%</b>	<b>9.2%</b>
			<b>Natural Gas</b>	<b>0.0%</b>	<b>0.0%</b>	<b>37.9%</b>
			<b>Nuclear</b>	<b>0.0%</b>	<b>0.0%</b>	<b>9.3%</b>
			<b>Other</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.2%</b>
			<b>Unspecified Power<sup>2</sup></b>	<b>26.9%</b>	<b>0.0%</b>	<b>6.8%</b>
			<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Percentage of Retail Sales Covered by Retired Unbundled RECs<sup>3</sup>:</b>				<b>0%</b>	<b>0%</b>	
<sup>1</sup> The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology. <sup>2</sup> Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source. <sup>3</sup> Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.						
For specific information about this electricity portfolio, contact:			<b>Desert Community Energy</b> <b>(855) 357-9240</b>			
For general information about the Power Content Label, visit:			<a href="http://www.energy.ca.gov/pcl/">http://www.energy.ca.gov/pcl/</a>			
For additional questions, please contact the California Energy Commission at:			Toll-free in California: 844-454-2906 Outside California: 916-653-0237			



## **ITEM 7A**

### **Desert Community Energy Board September 28, 2022**



#### **STAFF REPORT**

**Subject:** Master Power Purchase and Sale Agreement with Southern California Edison and Resource Adequacy Confirmation

**Contact:** David Freedman, Program Manager ([dfreedman@cvaq.org](mailto:dfreedman@cvaq.org))

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**Recommendation:** Adopt Resolution No. 2022-07, approving a Master Power Purchase and Sale Agreement and Confirmation Letter for Resource Adequacy with Southern California Edison Company

**Background:** DCE staff has been negotiating and finalizing a Master Power Purchase and Sale Agreement (Master Agreement) with Southern California Edison (“SCE”) for the purchase of energy and resource adequacy. A Master Agreement is an “evergreen” agreement to enter into future transactions with SCE. The Master Agreement will govern individual transactions between the parties, including buyer and seller obligations, defaults, collateral requirements, indemnities, and other legal provisions. The Master Agreement will largely govern purchases for system energy, and in some cases for renewable energy and resource adequacy.

SCE uses the Master Agreement developed by the Edison Electric Institute, which is the leading trade association for convenience and standardization of power purchases. The first section of the agreement, known as the Cover Sheet, enables election of certain optional provisions and allows for modifications to the standard terms agreed to by the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as they relate to the Master Agreement. The Collateral Annex, sometimes attached as part of the Master Agreement, sets forth procedures under which the parties will provide security under the Master Agreement (Credit and Collateral Requirements). Specifically, the Collateral Annex describes the conditions under which a party will be required to transfer performance assurance in the form of cash, a letter of credit, or other property, as well as the conditions under which a party administers and releases the performance assurance.

Actual purchases by DCE, also referred to as transactions, will be executed through a Confirmation that will contain the price, resource, quantity, term, and other commercial terms of the transaction. Confirmations are shorter contracts governed by the Master Agreement. Certain information contained in the Master Agreement and Confirmation is confidential market sensitive information, such as price, resource type, term and collateral requirements. Such information is considered confidential by the California Public Utilities Commission (CPUC) for up to three years and is not subject to disclosure under the Public Records Act. Any Confirmation brought to the Board for approval that contains confidential market sensitive information will be redacted.

In accordance with the below delegation of authority in the DCE’s Energy Risk Management Policy, the Executive Director has the authority to approve a transaction based on contract limits

for term, volume, and notional amount for system power, resource adequacy, renewables, and GHG-free product types. The delegated authority is shown below:

Position	Maturity Limit	Term Limit	Volume Limit (MWh) <sup>1</sup>	Value Limit <sup>2</sup>
Risk Management Team <sup>3</sup>	30 Months	24 Months	1,000,000	\$4,000,000
Executive Director	24 Months	18 Months	750,000	\$2,000,000
The Energy Authority (TEA)	18 months	12 Months	500,000	\$1,000,000

<sup>1</sup> Volume limit applies only to energy purchases, including index-based renewable and carbon-free energy purchases.

<sup>2</sup> Value limit applies to non-energy product transactions (e.g., resource adequacy).

<sup>3</sup> As established by the Energy Risk Management Policy. The Risk Management Team consists of the DCE Executive Director (Tom Kirk), Director (Kenyon Potter) and Program Manager (David Freedman), the CVAG Director of Finance/Administration (Claude Kilgore), a representative of TEA (Jaclyn Harr) and DCE's outside energy consultant (Don Dame).

Transactions falling outside these limits require approval of the Board of Directors.

#### *Resource Adequacy Confirmation*

The first confirmation to be entered into by DCE and SCE, simultaneously with the execution of the Master Agreement, is for resource adequacy. On May 19, 2022, the CPUC adopted the Decision on Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations, Decision ("D.") 22-05-015. D.22-05-015 provides load-serving entities with loads that migrated from the investor-owned utilities since November 7, 2019, the option to enter into an agreement with the relevant investor-owned utility that conducted procurement in accordance with CPUC Decision 19-11-016 to purchase a share of the system or flexible resource adequacy capacity at the Market Price Benchmark (MPB) calculated in accordance with the provisions of CPUC Decision (D.) 19-10-001. DCE is a load-serving entity with such migrated loads and has indicated to SCE its desire to enter into a Confirmation to purchase its eligible resource adequacy share of SCE's D.19-11-016 procurement. The resource adequacy delivery period begins on January 1, 2023, and continues until September 30, 2041.

SCE's Confirmation for the resource adequacy contains standard terms for Confirmations under the Master Agreement. The contract quantity may be adjusted during the term for:

- Delayed commercial online date of the project providing the resource adequacy
- Early termination of the project contract
- Planned maintenance of the resource
- California Independent System Operator/CPUC changes to Net Qualifying Capacity
- Potential change in law to resource adequacy.

The contracted capacity may be supplied by any of the procured resources or combination thereof during the term of the Confirmation. Collateral will apply to this transaction in the form of a standby letter of credit in favor of SCE, which will be issued pursuant to the Credit Agreement with River City Bank (RCB) as amended following Board approval of Resolution 2002-05 at its June 2022 meeting. The Confirmation will be subject to CPUC approval in accordance with D.22-05-015.

With this item, staff recommends the Board adopt Resolution 2022-07 and approve of the Master Agreement with SCE and the resource adequacy confirmation described above. The resolution also authorizes the Executive Director to negotiate, finalize and execute the Master Agreement and related documents in substantially similar form and as approved to form by legal counsel. Enablement of DCE under SCE's Master Agreement will also allow DCE to pursue future energy and resource adequacy purchases from SCE. One such purchase may be the opportunity to purchase additional renewable energy in SCE's Market Offer of resources that are unsold in the Voluntary Allocation approved by the Board at its July 2022 meeting. Staff and TEA will evaluate such opportunities and return to the Board for approval of any future purchases outside of the delegated authority limits noted in the table above.

**Fiscal Analysis:** Adoption of Resolution 2022-07 and entry into the Master Agreement with SCE do not result in any financial impact to DCE. However, each transaction entered into under a Confirmation will have a cost that is a subset of currently expected energy and resource adequacy procurement.

As noted above, the contract price under the resource adequacy Confirmation will be based on the current MPB calculated in accordance with D.19-10-001, with a year-end true up settlement. The forecasted MPB for 2022 for flexible resource adequacy is \$6.41/kW-month. Pursuant to CPUC Decision 22-01-023, the MPB is released on October 1 (or the first business day thereafter) each year, so both the contract price and the amount of the collateral posting are expected to be adjusted prior to deliveries beginning on January 1, 2023.

The costs associated with continued evaluation and monitoring of the Master Agreement and Confirmations issued thereunder are covered under the existing contracts with TEA and legal counsel as well as staff time. While standby letters of credit reduce the availability under the amended Credit Agreement, there is no interest accrual on the letter of credit commitment as long as the letter of credit remains undrawn. However, under the terms of the amended Credit Agreement, RCB charges various fees for issuance of a letter of credit. These fees are incorporated into the Fiscal Year 2022/2023 budget.

**Attachments:**

1. Resolution 2022-07
2. SCE EEI Master Agreement Cover Sheet
3. SCE Paragraph 10 to the EEI Master Agreement Collateral Annex
4. EEI Master Agreement

## **RESOLUTION NO. 2022-07**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF DESERT COMMUNITY ENERGY APPROVING A MASTER PURCHASE AND SALE AGREEMENT AND CONFIRMATION LETTER WITH SOUTHERN CALIFORNIA EDISON COMPANY**

A. Desert Community Energy (“DCE”) is a joint powers authority established on October 30, 2017 for the purpose of implementing community choice aggregation (“CCA”) program under Public Utilities Code section 366.2.

B. DCE is negotiating an Edison Electric Institute (“EEI”) Master Purchase and Sale Agreement (“Master Agreement”) with Southern California Edison Company (“SCE”) that will allow DCE to be enabled with SCE in order to participate in SCE competitive solicitations for energy and capacity products.

C. The EEI Master Agreement is an industry standard, boilerplate agreement developed by the leading electricity trade association used nationwide between buyers and sellers of energy. The Master Agreement governs the purchase and sale of electricity and other products, and requires a separate written confirmation agreement to execute a specific binding transaction. Buyers and sellers negotiate minor changes to an EEI Master Agreement based on unique credit and other requirements of the individual parties.

D. DCE is also negotiating a Confirmation Letter to procure resource adequacy capacity from SCE pursuant to the California Public Utilities Commission (“CPUC”) Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations, Decision 22-05-015, to purchase system resource adequacy capacity with flexibility attributes at the CPUC Market Price Benchmark beginning in 2023 through 2041.

E. The Confirmation Letter contains standard terms and conditions for confirmation transactions as governed by the Master Agreement.

F. Under Section 2.5.1 of the DCE Joint Powers Agreement, the DCE Board of Directors has the power to make and enter into all contracts, including, but not limited to, service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs including the acquisition of electric power supply and the provision of retail and regulatory support services.

G. Under DCE’s Energy Risk Management Policy, the Board of Directors must approve all transactions in excess of the policy’s maturity, term, volume or value limits.

H. DCE staff recommends the approval of the Master Agreement and Confirmation Letter, and the Board has received information and has had discussion regarding the terms of the agreements.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DESERT COMMUNITY ENERGY, AS FOLLOWS:**

Section 1. Approval of Master Agreement. The Board of Directors hereby approves the Master Agreement with SCE.

Section 2. Approval of Confirmation Letter. The Board of Directors hereby approves the Confirmation Letter with SCE.

Section 3. Delegation to Executive Director. The Board of Directors hereby authorizes the DCE Executive Director to negotiate, finalize and execute the Master Agreement and Confirmation Letter in substantially similar form as approved to form by the General Counsel.

Section 4. Resolution Effective Date. This resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** at a meeting of the Board of Directors of Desert Community Energy held on September 28, 2022.

ATTEST:

\_\_\_\_\_  
Geoff Kors, Chair  
Desert Community Energy

\_\_\_\_\_  
Tom Kirk, Secretary  
Desert Community Energy

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_ –

**[THIS MASTER AGREEMENT IS SUBJECT TO SCE MANAGEMENT REVIEW AND APPROVAL<sup>1</sup>]**

## MASTER POWER PURCHASE AND SALE AGREEMENT

### COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: \_\_\_\_\_ ("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, 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:** {*Counterparty Legal Name*} ("Party A")

**All Notices:**

Street:

City: Zip:

Attn:

Phone:

Email:

Duns:

Federal Tax ID Number:

**Invoices:**

Attn:

Phone:

Email:

**Scheduling:**

Attn:

Phone:

Email:

**Payments:**

Attn:

Phone:

Email:

**Wire Transfer:**

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn:

Phone:

Email:

**Name:** Southern California Edison Company ("Party B")

**All Notices:**

Street: 2244 Walnut Grove Ave., G.O.1, Quad 1C

City: Rosemead, CA Zip: 91770

Attn: Director, Energy Contracts Management

Phone: (626) 302-3126

Facsimile: (626) 302-1103

Email: [Energycontracts@sce.com](mailto:Energycontracts@sce.com)

Duns: 006908818

Federal Tax ID Number: 95-1240335

**Invoices:**

Attn: EPM & Contract Settlements

Phone: (626) 302-8908

Email: [PPFDPowerSettle@sce.com](mailto:PPFDPowerSettle@sce.com)

**Scheduling:**

Attn: Manager or Day Ahead Operations

Phone: (626) 307-4425 or (626) 307-4420

Facsimile: (626) 307-4413

E-mail: [presched@sce.com](mailto:presched@sce.com)

**Payments:**

Attn: EPM & Contract Settlements

Phone: 626-302-8908

E-mail: [PPFDPowerSettle@sce.com](mailto:PPFDPowerSettle@sce.com)

**Wire Transfer:**

BNK: [REDACTED]

ABA: [REDACTED]

ACCT: [REDACTED]

**Credit:**

Attn: Manager of Credit Risk

Phone: (626) 302-3672

<sup>1</sup> [SCE Comment: Green highlights are comments or instructions to be deleted prior to final execution.]

**Confirmations:**

Attn:  
Phone:  
Email:

**Confirmations:**

Attn: Confirmation Coordinator  
Phone: (626) 302-3383  
Facsimile: (626) 302-3410  
Email: SCERiskControl@sce.com

**Collateral:**

Southern California Edison Company  
Attn: Manager of Risk Operations & Collateral  
Management  
2244 Walnut Grove Avenue, GO1 Quad 2A  
Rosemead, CA 91770  
Phone: (626) 302-3383  
Email: SCECollateral@sce.com

**With additional Notices of an Event of Default or  
Potential Event of Default to:**

Attn:  
Phone:  
Email:

**With additional Notices of an Event of Default or Potential  
Event of Default to:**

Southern California Edison Company  
2244 Walnut Grove Ave., G.O.1, Quad 1C  
Rosemead, CA 91770  
Attn: Director, Contracts Management and Administration  
Phone: (626) 302-3126  
Facsimile: (626) 302-8168  
Email: [Energycontracts@sce.com](mailto:Energycontracts@sce.com), and  
Attention: Director and Managing Attorney Power  
Procurement Section  
E-mail: PPLegalNotice@sce.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:

Party A Tariff    Tariff                      Dated                                           Docket Number                     

Party B Tariff    Tariff Original Vol. No. 8    Dated 09/01/2002                      Docket Number ER 02-2263-000

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## **Article Two**

Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

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## **Article Four**

Remedies for Failure to Deliver or Receive ☒ Accelerated Payment of Damages. If not checked, inapplicable.

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## **Article Five**

Events of Default;  
Remedies

### 5.1(g) Cross Default for Party A:

☒ Party A: Cross Default Amount \$ [Amount and/or Methodology To Be Negotiated]

☐ Other Entity: [Guarantor, if applicable] Cross Default Amount \$ [Amount and/or Methodology To Be Negotiated]

### 5.1(g) Cross Default for Party B:

☒ Party B: Southern California Edison Company. Cross Default Amount [REDACTED]

☐ Other Entity: Not Applicable. Cross Default Amount \$ \_\_\_\_\_

### 5.6 Closeout Setoff

- ☒ Option A, as amended.
- ☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_
- ☐ Option C (No Setoff).
- 

## **Article Eight**

Credit and Collateral  
Requirements

### 8.1 Party A Credit Protection:

#### (a) Financial Information:

- ☒ Option A, as amended.
- ☐ Option B Specify: \_\_\_\_\_
- ☐ Option C Specify: \_\_\_\_\_



(b) Credit Assurances:

- ☒ Not Applicable.  
☐ Applicable.

(c) Collateral Threshold:

- ☐ Not Applicable.  
☒ Applicable, as specified in **Paragraph 10 to the EEI Collateral Annex.**

(d) Downgrade Event:

- ☒ Not Applicable.  
☐ Applicable.

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by any Ratings Agency.  
☐ Other:  
Specify:

(e) Guarantor for Party B: Not Applicable.

Guarantee Amount: Not Applicable.

8.2 Party B Credit Protection:

(a) Financial Information:

- ☒ Option A, as amended.  
☐ Option B, as amended. Specify: [Guarantor or other party specified, if applicable] \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☒ Not Applicable.  
☐ Applicable.

(c) Collateral Threshold:

- ☐ Not Applicable.  
☒ Applicable, as specified in **Paragraph 10 to the EEI Collateral Annex.**

(d) Downgrade Event:

- ☒ Not Applicable.  
☐ Applicable.

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_ from S&P or \_\_\_\_ from Moody's or if Party A is not rated by any Ratings Agency.

☐ Other:  
Specify:

(e) Guarantor for Party A:

Guarantee Amount: \$\_\_\_\_\_

## **Article Ten**

Confidentiality

☒ Confidentiality Applicable. If not checked, inapplicable.

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## **Schedule M**

☐ Party A is a Governmental Entity or Public Power System.

☐ Party B is a Governmental Entity or Public Power System.

☐ Add Section 3.6. If not checked, inapplicable.

☐ Add Section 8.4. If not checked, inapplicable.

## Other Changes

The following changes shall be applicable.

### **ARTICLE ONE: GENERAL DEFINITIONS.** Amend Article One as follows:

Section 1.4 is amended by (i) deleting the word “or” in the first line, and (ii) inserting the words “, or the Friday immediately following the U.S. Thanksgiving holiday” immediately after “Bank holiday”.

Section 1.11 is amended by (i) deleting the words “attorneys’ fees and” and (ii) inserting the words “(excluding attorneys’ fees)” after the word “expenses” in the fifth line.

Section 1.12 is amended to read as follows:

“1.12 ‘Credit Rating’ means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by the Ratings Agencies. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations the Ratings Agencies, then ‘Credit Rating’ shall mean the general corporate credit rating or long-term issuer rating assigned to such entity by the Ratings Agencies. If any entity is rated by more than one Ratings Agency and the ratings are at different levels, then ‘Credit Rating’ means the lowest such rating.”

Section 1.24 is amended by inserting the words “in accordance with Section 5.2(b)” immediately after “reasonable manner”.

Section 1.27 is amended to read as follows:

“1.27 ‘Letter of Credit’ means an irrevocable, nontransferable standby letter of credit, substantially in the form of Schedule 1 and acceptable to Secured Party, issued by a major U.S. commercial bank, U.S. financial institution, or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least A- by S&P or A3 by Moody’s. If such financial institution or bank is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.”

Section 1.28 is amended by inserting the words “in accordance with Section 5.2(b)” immediately after “reasonable manner”.

Section 1.50 is amended by replacing the term “Section 2.4” with the term “Section 2.5”.

Section 1.51 is amended by (i) deleting the phrase “at the Delivery Point” and replacing it with “, from an entity that is not an Affiliate of either Party,”; (ii) in clause (ii) inserting after the phrase “at Buyer’s option,” the phrase “absent a purchase from an entity that is not an Affiliate of either Party,”; and (iii) in the last sentence thereof deleting the phrase “at the Delivery Point” and replacing it with “that is not an Affiliate of either Party”.

Section 1.53 is amended by (i) deleting the phrase “at the Delivery Point” and replacing it with “, to an entity that is not an Affiliate of either Party,”; (ii) in clause (ii) inserting after the phrase “at Seller’s option,” the phrase “absent a sale to an entity that is not an Affiliate of either Party,”; and (iii) in the last sentence thereof deleting the phrase “at the Delivery Point” and replacing it with “that is not an Affiliate of either Party”.

New Sections 1.62, 1.63, 1.64, 1.65, 1.66, 1.67, and 1.68 are added to read as follows:

“1.62 ‘Forward Price Assessments’ means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from

a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products.”

“1.63 ‘Market Quotation Average Price’ means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained in good faith by such Party, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date, such day and time as of which those quotations will be selected shall be specified in accordance with Section 5.2. If fewer than three (3) quotations are obtained, it will be deemed that the Market Quotation Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.”

“1.64 ‘Merger Event’ means, with respect to a Party or its Guarantor, that such Party or its Guarantor consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder or of such Party’s Guarantor under its guaranty, or (ii) the benefits of any credit support provided by such Party pursuant to Article Eight, or any guaranty provided by such Party’s Guarantor, fail to extend to the performance of such resulting, surviving or transferee entity’s obligations hereunder, or (iii) the resulting entity’s creditworthiness is materially weaker than that of such Party or its Guarantor immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party or its Guarantor, as the case may be, immediately prior to the consolidation, merger or transfer.”

“1.65 ‘Ratings Agency’ means any of S&P and Moody’s, and any other ratings agency agreed by the Parties (collectively the ‘Ratings Agencies’).”

“1.66 ‘Reference Market-Maker’ means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.”

“1.67 ‘Specified Energy Transaction’ means any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between Party A and Party B (or any Guarantor of such Party) which is not a Transaction under this Agreement, which is a transaction under the International Swaps and Derivatives Association Master Agreement, the North American Energy Standards Board Base Contract for Purchase and Sale of Natural Gas, the WSPP Agreement, or under any other agreement with respect to the purchase, sale, or transfer of (a) wholesale physical electric energy, capacity, ancillary services or resource adequacy benefits; (b) wholesale physical natural gas; (c) transmission services or capacity, (d)

emissions (including greenhouse gas emissions) related credits, allowances or offsets, or (e) financial derivative products related to any of the foregoing.”

**ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.** Amend Article Two as follows:

Section 2.1 is amended by adding the following sentence to the end thereof “Any Transaction formed and effectuated pursuant to the foregoing shall be considered a ‘writing’ or ‘in writing’ and to have been ‘signed’ by each Party or otherwise binding on the Parties.”

Section 2.2 is amended to delete the second comma after the words “supplements hereto),” and before “the Party” in the second sentence.

Section 2.4 is amended by (i) deleting the words “either orally or” after the phrase “Section 2.3 unless agreed to” in the second to last line thereof.

Section 2.5 is amended (i) to delete the phrase “Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,”; (ii) by capitalizing the word “each” in the first sentence; and (iii) replacing the words “Parties to this Master Agreement” with “Parties’ trading and marketing personnel”.

A new Section 2.6 is added to read as follows:

“2.6 Imaged Agreement. Any original executed Master 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 evidence 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 or into other written format, 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 or written form under either the hearsay rule or the best evidence rule. However, nothing in this Section 2.6 shall preclude a Party from challenging the admissibility of such evidence on some other grounds, including, without limitation, the basis that such evidence has been materially or substantially altered from the original.”

**ARTICLE THREE: OBLIGATIONS AND DELIVERIES.** Amend Article Three as follows:

A new Section 3.4 is added to read as follows:

“3.4 Index Transactions. If the Contract Price for a Transaction is determined by reference to an index, then the following provisions shall be applicable to such Transaction.

- (a) 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 the price quotations for the relevant commodity and relevant Business Days that are obtained from no more than two (2) Reference Market-Makers selected by each Party.

(b) For purposes of this Section 3.4, the following definitions shall apply:

- (i) ‘Determination Period’ means each calendar month a part or all of which is within the Delivery Period of a Transaction.
- (ii) ‘Exchange’ means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.
- (iii) ‘Floating Price’ means a price per unit in \$U.S. specified in a Transaction that is based upon a Price Source.
- (iv) ‘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.
- (v) ‘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.
- (vi) ‘Trading Day’ means a day in respect of which the relevant Price Source published the Floating Price.

(c) 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 twelve (12) months 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 ten (10) 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.

(d) Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th)

decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.”

**ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.** Amend Article Five as follows:

Section 5.1(e) is amended by adding after the word “hereof” the phrase “or any other credit arrangement, including, but not limited to, the Collateral Annex (or any similar agreement) related to this Agreement”.

Section 5.1(f) is amended to read as follows:

“(f) a Merger Event occurs with respect to such Party or its Guarantor, if applicable;”

Section 5.1(h)(iv) is amended by inserting the words “made in connection with this Agreement” after the first instance of the word “guaranty”.

Section 5.1(h)(v) is amended by inserting the words “made in connection with this Agreement” after the word “guaranty”.

Section 5.1 is amended by adding the following Sections 5.1(i) and 5.1(j) at the end thereof:

“(i) an event of default occurs (howsoever determined) under a Specified Energy Transaction with respect to such Party and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of that Specified Energy Transaction; or

(j) the Party disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that Party, or any Transaction evidenced by such a Confirmation.

Section 5.2 is amended by (i) inserting “(a)” at the beginning thereof; (ii) reversing the placement of “(i)” and “to”; (iii) inserting after the words “designate a day” the words “and time of day” in clause (i) thereof; (iv) replacing the phrase “as soon thereafter as is reasonably practicable)” with “, then each such Transaction — individually, an ‘Excluded Transaction’ and collectively, the ‘Excluded Transactions’— shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction) and the Termination Payment payable in connection with all Terminated Transactions shall be calculated in accordance with this Section 5.2 and with Section 5.3 below”; and (v) adding the following paragraph at the end thereof:

“(b) The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for each Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Forward Price Assessments for transactions substantially similar to each Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) Forward Price Assessments with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant

markets; provided, however, that the provider of such information shall not be an Affiliate of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.”

Section 5.3 is amended by (i) deleting the “:” in the second line thereof; (ii) replacing the words “Agreement against” with “Agreement, against” immediately before “(b)”; and (iii) inserting the phrase “any cash then available to the Defaulting Party pursuant to Article Eight,” between the words “Non-Defaulting Party,” and “plus any” in the sixth line thereof.

Section 5.4 is amended by inserting the phrase “but in no event more than fifteen (15) Business Days following the Early Termination Date,” after the phrase “liquidation,” in the second line thereof.

Section 5.6 Option A is amended by (i) inserting the following phrase “with respect to the Specified Energy Transactions,” before the words “and/or (ii)” and (ii) adding the following at the end thereof :

“Notwithstanding anything to the contrary contained in this Master Agreement, or in any other agreement, instrument, or undertaking between the Parties with respect to a Specified Energy Transaction, if an Early Termination Date has been designated pursuant to Section 5.2, then, in addition to the other remedies provided in this Master Agreement, the Non-Defaulting Party may accelerate, liquidate and terminate all, but not less than all, Specified Energy Transactions between the Parties.”

Section 5.7 is amended to capitalize the word “early” in line 6 to read “Early”.

**ARTICLE SIX: PAYMENT AND NETTING.** Amend Article Six as follows:

Section 6.3 is amended to read as follows:

“6.3 Disputes and Adjustments of Invoices. A Party may adjust any invoice rendered by it under this Agreement to correct any arithmetic or computational error or to include additional charges or claims within twenty-four (24) months after the close of the month in which the obligations being invoiced arose. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing notice to the other Party on or before the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twenty-four (24) months after the close of the month in which the obligation being invoiced arose. Failure to provide such notice within the time frame set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it may pay only the undisputed portion of the invoice when due, provided such Party provides notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is actually paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. An invoice can only be adjusted or amended after it was originally rendered within the time frames



set forth in this Section 6.3. If an invoice is not rendered within twenty-four (24) months after the close of the month in which the payment obligations arose, the right to payment for that month under this Agreement is waived.”

Section 6.7 is amended to replace the phrase “Section 6.1” with the phrase “Section 6.2”.

**ARTICLE SEVEN: LIMITATIONS.** Amend Article Seven as follows:

Section 7.1 is amended to (i) delete the phrase “EXCEPT AS SET FORTH HEREIN” in the first sentence; and (ii) in the fifth sentence (a) replace in its entirety the phrase “UNLESS EXPRESSLY HEREIN PROVIDED” with “NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY”; (b) add the following phrase “SET FORTH IN THIS AGREEMENT” after the words “INDEMNITY PROVISION”; and (c) add the following phrase “; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTIONS 5.2 AND 5.3 OF THIS AGREEMENT” after the words “OR OTHERWISE”.

**ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.** Amend Article Eight as follows:

Section 8.1(a) Option A is amended to add (i) the following phrase “(income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) after the words “consolidated financial statements” in the third line; (ii) the phrase “setting forth in each case in comparative form the figures for the previous year” after the words “for such fiscal year,” in the third line; and (iii) the phrase “and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations, provided however, for the purposes of this (i) and (ii), if Party B’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website or Party B’s website, then Party B shall be deemed to have met this requirement” after the words “for such fiscal quarter” in the fifth line.

Section 8.2(a) Option A is amended to add (i) the following phrase “(income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes)” after the words “consolidated financial statements” in the third line; (ii) the phrase “setting forth in each case in comparative form the figures for the previous year” after the words “for such fiscal year,” in the third line; and (iii) the phrase “and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments)], provided however, for the purposes of this (i) and (ii), if Party A’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website or Party A’s website, then Party A shall be deemed to have met this requirement” after the words “for such fiscal quarter” in the fifth line; and (v) at the end thereof the phrase “For purposes of this Section, ‘Responsible Officer’ shall mean the Chief Financial Officer, Treasurer or any Assistant Treasurer of Party A or any employee of Party A designated by any of the foregoing.”.

A new Section 8.4 is added to read as follows:

“8.4 California Commercial Code Waiver. This Agreement and the Collateral Annex set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties

in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, nor

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Master Agreement and of the relevant provisions of the Collateral Annex;

and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.”

**ARTICLE NINE: GOVERNMENTAL CHARGES.** Amend Article Nine as follows:

Section 9.2, is amended to add the words “, charges, or fees” after the word “taxes” in the first line thereof.

**ARTICLE TEN: MISCELLANEOUS.** Amend Article Ten as follows:

Section 10.2(vi) is amended to add the phrase “(for purposes of this Section 10.2(vi), Party B shall be deemed to have no Affiliates)” after the word “Affiliates”.

Section 10.2(xii) is amended to read as follows:

“(xii) each Transaction that is not executed or traded on a ‘trading facility’, as defined in the Commodity Exchange Act, as otherwise amended, updated or modified from time to time, is subject to individual negotiation by the Parties.”

Section 10.4 is amended by adding the following sentence at the end thereof:

“Neither Party shall be liable with respect to any Claim to the extent that such Claim resulted from the negligence, willful misconduct, or bad faith of the indemnified Party.”

Section 10.5 is amended as follows:

(a) add the following phrase to the end of clause (i) immediately after the word “arrangements” the phrase “to any person or entity whose creditworthiness is equal to or higher than that of such Party”; (b) in clause (ii) replace the words “affiliate” and “affiliate’s” with, respectively “Affiliate” and “Affiliate’s”; and (c) in clause (iii) immediately after the words “substantially all of the assets” insert the words “of such Party and”.

Section 10.6 is amended to read as follows:

“10.6 Governing Law; Venue; Dispute Resolution.

(a) Governing Law and Venue: 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 LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS

AGREEMENT. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to, or arising from this Agreement in Los Angeles County, California.

(b) Dispute Resolution:

(i) Mediation. The Parties agree that any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to this Agreement, or to either Party's performance or failure of performance under this Agreement, which disputes, claims, or controversies the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to Judicial Arbitration and Mediation Services, Inc. ('JAMS'), its successor, or any other mutually agreeable neutral (the 'Mediator') for mediation, and if the matter is not resolved through mediation, then it shall be submitted as provided below for final and binding arbitration.

The Parties agree that there will be no interlocutory appellate relief (such as writs) available. Any dispute resolution process pursuant to this Section 10.6(b) shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered, and in no event more than four (4) years after the occurrence of the facts giving rise to the dispute. If any dispute resolution process pursuant to this Section 10.06(b) with respect to a dispute is not commenced within such one (1) year time period, such dispute shall be waived and forever barred, without regard to any other limitations period set forth by law or statute.

Either Party may initiate the mediation by providing to the other Party a written request for mediation setting forth the subject of the dispute and the relief requested.

The Parties will cooperate with one another in selecting the Mediator from the JAMS' panel of neutrals, or in selecting a mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after a Party provides a written request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days after a Party provides a written request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose,

including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided*, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(ii) Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by making a written demand for binding arbitration before a single, neutral arbitrator (the ‘Arbitrator’) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.06(b)(i). If a written demand for arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.06(b)(i), the dispute resolution process shall be deemed complete and further resolution of such dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in promptly selecting the Arbitrator and shall further cooperate in scheduling the arbitration to commence no later than 180 days from the date of the initial written demand for binding arbitration.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon a Party’s written demand for binding arbitration, such dispute, claim or controversy submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regards to principles of conflicts of laws.

Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration shall be in Los Angeles County, California.

Also, notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (1) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

- (2) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (3) Discovery may commence at any time after the Parties' initial disclosure;
- (4) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (5) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (6) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (7) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (8) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (9) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (10) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 7.1, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 10.11 of this Agreement.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator, against the Party who did not prevail.

Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court

judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees."

Section 10.8 is amended to replace in the penultimate sentence thereof the phrase "twelve (12) months" with the phrase "two (2) years".

Section 10.10 is amended to read as follows:

"10.10 Bankruptcy Issues. The Parties intend that (i) all Transactions constitute a 'forward contract' within the meaning of the United States Bankruptcy Code (the 'Bankruptcy Code') or a 'swap agreement' within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute 'settlement payments' within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute 'margin payments' within the meaning of the Bankruptcy Code; (iv) this Agreement constitutes a 'master netting agreement' within the meaning of the Bankruptcy Code; and (v) each of Party A and Party B are "forward contract merchants" within the meaning of the Bankruptcy Code.

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, 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 to the extent such term relates to 11 U.S.C. Section 366 or another provision of 11 U.S.C. Section 101-1532."

Section 10.11 is amended to read as follows:

"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 this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or rating agencies who have a need to know such information and have agreed to keep such terms strictly confidential and to take reasonable precautions to protect against disclosure of such terms) except (i) in order to comply with any applicable law, order, regulation, ruling, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable governmental authority; (ii) to the extent necessary for the enforcement of this Agreement or to implement any Transaction; (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party or its Guarantor in making such disclosure; (iv) to the extent such disclosure to a third party is for the sole purpose of calculating a published index, so long as such third party (1) has agreed prior to the disclosure to protect the specific information disclosed from public disclosure and (2) is a party engaged in the business of collecting such information for the purpose of establishing, creating, or formulating a published index; (v) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (vi) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of

the information being released); or (vii) with respect to Party B, as may be furnished to its duly authorized regulatory and governmental agencies or entities, including without limitation the California Public Utilities Commission (the “CPUC”) and all divisions thereof, and to Party B’s Procurement Review Group (the “PRG”), a group of participants including members of the CPUC and other governmental agencies and consumer groups established by the CPUC in D.02-08-071 and D.03-06-071; provided, Party B shall have no liability to Party A in the event of any unauthorized use or disclosure by such entities. The existence of this Agreement is not subject to this confidentiality obligation; provided that neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (i) or (vi) of the foregoing sentence of this Section 10.11. 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. With respect to information provided in connection with a Transaction, this obligation shall survive for a period of three (3) years following the expiration or termination of such Transaction. With respect to information provided under this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement. For the purposes of this Section 10.11, “Affiliate” for Party A shall mean \_\_\_\_\_ and “Affiliate” for Party B shall mean Edison International.”

New Sections 10.12, 10.13, 10.14, 10.15, 10.16, and 10.17 shall be added as follows:

“10.12 No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.”

“10.13 Mobile Sierra Doctrine.

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010) (the ‘Mobile Sierra’ doctrine).
- (b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain 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 any rate or other material economic terms and conditions agreed to by the Parties.”

“10.14 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages

by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.”

“10.15 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.”

“10.16 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.”

“10.17 Rules of Construction.

- (a) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (b) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (c) All references to time shall be in PPT unless stated otherwise.”

**SCHEDULE P: PRODUCTS AND DEFINITIONS**. Amend Schedule P as follows:

The following definitions are added:

“ ‘CAISO Energy’ means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO (as amended from time to time, the ‘Tariff’) for which the only excuse for failure to deliver or receive is an Uncontrollable Force (as defined in the Tariff).”

The following products are added:

“Other Products and Service Levels.

If the Parties agree to a service level or product defined by a different agreement, set of rules, tariff, or protocol (herein, the ‘agreement’) (i.e., the WSPP Agreement) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level or product defined by such other agreement means that the service level or product for that Transaction is subject to the applicable regional independent system operator and/or utility reliability requirements and guidelines as well as the permitted excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to performance under such other agreement, to the extent inconsistent with the terms of this Agreement, provided, however, that all other terms and conditions of this Agreement shall and do remain applicable including, without limitation, Section 2.2; and provided, further that with respect to any Transaction for a product or service level defined by such other agreement, the methodology for calculating the payments for failure to deliver or receive shall be in accordance with



Sections 4.1 and 4.2 of the Master Agreement; provided, further that the ‘Accelerated Payment of Damages’ addressed in Article Four and agreed to in the Cover Sheet of the Master Agreement shall continue to apply.”

“Into \_\_\_\_\_ (the ‘Receiving Transmission Provider’), Seller’s Daily Choice” is deleted in its entirety.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A: *{Counterparty Legal Name}*

Party B: SOUTHERN CALIFORNIA EDISON COMPANY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: *{Name of Authorized Signer}*

Name: *{Name of SCE Signer}*

Title: *{Title of Authorized Signer}*

Title: *{Title of SCE Signer}*

**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 there from. 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.

**SCHEDULE 1 – Form of Letter of Credit**

**IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT**

Bank Reference Number: \_\_\_\_\_

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

[insert beneficiary name and address]

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

\_\_\_\_\_ (the “Bank”) hereby establishes this Irrevocable Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of \_\_\_\_\_, a \_\_\_\_\_ corporation, also known as ID# \_\_\_\_\_ (the “Applicant”), for the amount stated above (the “Available Amount”), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., California time on the expiration date stated above or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit) (the “Expiration Date”).

For the purpose hereof, “Business Day” shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of Los Angeles, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by complying presentation on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment “A” attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A copy of the Sight Draft in the form of Attachment “B” attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by telecopy (“Fax”) to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It being understood that any such fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by fax, the original documents should not also be presented.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [insert Beneficiary name and address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary’s prior written consent.

The Bank engages with the Beneficiary that Beneficiary’s drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]\_\_\_\_\_

Title: [print title]\_\_\_\_\_

**ATTACHMENT A**  
*Drawing Certificate*

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT  
REFERENCE NUMBER: \_\_\_\_\_

DATE: \_\_\_\_\_

*[insert Beneficiary name]* (the “Beneficiary”), demands *[Issuing Bank Name]* (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$\_\_\_\_\_ (\_\_\_\_\_ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

[ ] A. An Event of Default (as defined in the Edison Electric Institute Master Power Purchase & Sale Agreement Version 2.1 (modified on 4/25/00) between *[insert Counterparty name]* or its successor (the “Counterparty”) and Beneficiary, dated as of *[Date of Execution]*, as may be amended from time to time, (the “EEI Agreement”), with respect to the Counterparty has occurred and is continuing.

[ ] B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the EEI Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative Performance Assurance (as defined in the EEI Agreement) acceptable to Beneficiary.

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

Authorized Signature for Beneficiary:

*[insert Beneficiary name]*

By:

Name: [print name]

Title: [print title]

**ATTACHMENT B**  
*SIGHT DRAFT*

[Insert Date]

TO:  
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE “BENEFICIARY”) THE  
AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER [ISSUING BANK NAME] IRREVOCABLE  
NONTRANSFERABLE STANDY LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON  
[INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT SHALL BE WIRE  
TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH THE FOLLOWING  
INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

---

AUTHORIZED SIGNATURE  
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

**PARAGRAPH 10 to the COLLATERAL ANNEX of the  
EEI MASTER POWER PURCHASE AND SALE AGREEMENT between**

<b>“Party A”:</b>	<i>{Counterparty Legal Name}</i>
<b>“Party B” or “SCE”:</b>	<b>Southern California Edison Company</b>

**CREDIT ELECTIONS COVER SHEET**

**Paragraph 10. Elections and Variables**

**I. Collateral Threshold.**

**A. Party A Collateral Threshold.**

- ☒ \$ **0** (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the Ratings Agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<b>Party A</b>	
<b>Collateral Threshold</b>	<b>Credit Rating</b>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below



- ☐ The amount (“Threshold Amount”) which is the lowest of:
- (1) the amount set forth below under the heading “Party A Collateral Threshold” opposite the lower of the Credit Ratings for Party A or, if applicable, Party A’s Guarantor on the relevant date of determination. If Party A or, if applicable, its Guarantor does not have a Credit Rating on the relevant date of determination from at least one of the Ratings Agencies specified below, the Collateral Threshold shall be \$0 (zero);
  - (2) 80% of the amount of the guaranty agreement, as amended from time to time, provided by Party A’s Guarantor, if any, for the benefit of Party B; or
  - (3) \$0 (zero) if an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing:

Party A Collateral Threshold	Moody’s Credit Rating	S&P Credit Rating
<u>{\$ Threshold}</u>	Aa3 or above	AA- or above
<u>{\$ Threshold}</u>	A1	A+
<u>{\$ Threshold}</u>	A2	A
<u>{\$ Threshold}</u>	A3	A-
<u>{\$ Threshold}</u>	Baa1	BBB+
<u>{\$ Threshold}</u>	Baa2	BBB
<u>{\$ Threshold}</u>	Baa3	BBB-
\$ 0 (zero)	Ba1 or below	BB+ or below

- ☐ The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party A’s Collateral Threshold be greater than \$ \_\_\_\_\_.
- ☐ Other – see attached threshold terms

**B. Party B Collateral Threshold.**

- ☐ \$ \_\_\_\_\_ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the Ratings Agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however,

in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

<b>Party B Collateral Threshold</b>	<b>Credit Rating</b>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below

☒ The amount (the “Threshold Amount”) which is the lower of:

- (1) the amount set forth below under the heading “Party B Collateral Threshold” opposite the lower of the Credit Ratings for Party B on the relevant date of determination. If Party B does not have a Credit Rating on the relevant date of determination from at least one of the Ratings Agencies specified below, the Collateral Threshold shall be \$0 (zero);
- (2) \$0 (zero) if an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing:

<b>Party B Collateral Threshold</b>	<b>Moody’s Credit Rating</b>	<b>S&amp;P Credit Rating</b>
_____	Aa3 or above	AA- or above
_____	A1	A+
_____	A2	A
_____	A3	A-
_____	Baa1	BBB+
_____	Baa2	BBB
_____	Baa3	BBB-
_____	Ba1	BB+
_____	Ba2 or below	BB or below

- ☐ The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party B’s Collateral Threshold be greater than \$ \_\_\_\_\_.
- ☐ Other – see attached threshold terms

## II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	[ X ]	[ X ]	100%
(B)	Letters of Credit	[ X ]	[ X ]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0%).

## III. Independent Amount.

### A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$ \_\_\_\_\_. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☒ Party A shall have a Full Floating Independent Amount of (i) the amount specified in a Transaction or Confirmation, if any; and (ii) if Party A's Credit Rating is lower than BBB- by S&P or Baa3 by Moody's, the amount equal to ten percent (10%) of the market value of all outstanding Transactions (except those for which an alternative Independent Amount is specified in the Confirmation), adjusted by the netting of the market value of purchases with the market value of sales within the same billing cycles. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating the Collateral Requirements pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added to the Exposure Amount for Party B and subtracted from the Exposure Amount for Party A.
- ☐ Party A shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating

Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☐ Not Applicable.

**B. Party B Independent Amount.**

☐ Party B shall have a Fixed Independent Amount of \$ \_\_\_\_\_. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party B shall have a Full Floating Independent Amount of \$ \_\_\_\_\_. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party B shall have a Partial Floating Independent Amount of \$ \_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable.

**IV. Minimum Transfer Amount.**

**A. Party A Minimum Transfer Amount: \$1**

**B. Party B Minimum Transfer Amount: \$1**

**V. Rounding Amount.**

**A. Party A Rounding Amount: [REDACTED]**

**B. Party B Rounding Amount: [REDACTED]**

**VI. Administration of Cash Collateral.**

**A. Party A Eligibility to Hold Cash.**

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☒ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party; (2) Party A or, if applicable, Party A's Guarantor has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; provided, if Party A, or, if applicable, Party A's Guarantor has a Credit Rating of BBB- by S&P or Baa3 by Moody's, such entity, in each case, has a "Stable" outlook or above; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

**Party A Interest Rate.**

☒ Federal Funds Effective Rate – for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption "Federal funds (effective)" as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System.

☐ Other -

To the extent that Party A is not entitled to hold Cash, Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.

**B. Party B Eligibility to Hold Cash.**

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- ☒ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party; (2) Party B has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; provided, if Party B has a Credit Rating of BBB- by S&P or Baa3 by Moody's, such entity, in each case, has a "Stable" outlook or above; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

**Party B Interest Rate.**

- ☒ Federal Funds Effective Rate – for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption "Federal funds (effective)" as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other -

To the extent that Party B is not entitled to hold Cash, Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.

**VII. Notification Time.**

10:00 a.m. Pacific Prevailing Time on a Local Business Day.

**VIII. General.**

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

**IX. Other Changes.**

The following changes to the Collateral Annex shall be applicable.

**A. Introduction.** The first paragraph of the introduction is amended to read as follows:

“This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the “Collateral Annex”) supplements, forms a part of, and is subject to the EEI Master Power Purchase and Sale Agreement dated as of \_\_\_\_\_ between *{Counterparty Legal Name}* (“Party A”) and Southern California Edison Company (“Party B”), including the Cover Sheet and any other annexes thereto (as amended and supplemented from time to time, the “Agreement”). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.”

**B. Paragraph 1. Definitions.** Amend Paragraph 1 as follows:

- i. The definition of “Credit Rating” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.12 of the Master Agreement as modified in the Cover Sheet.
- ii. The definition of “Credit Rating Event” is amended by replacing “6(a)(iii)” with “6(a)(ii)”.
- iii. The definition of “Downgraded Party” is amended by replacing “6(a)(i)” with “6(a)(ii)”.
- iv. The definition of “Interest Amount” is deleted in its entirety and replaced as follows:  
  
“Interest Amount” means the product of the following three factors: (a) the dollar amount of Cash on which an interest payment is based; (b) Interest Rate; and (c) the number of days in the calculation period divided by 360.
- v. The definition of “Interest Period” is deleted in its entirety.
- vi. The definition of “Letter of Credit” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.27 of the Master Agreement as modified in the Cover Sheet.
- vii. The definition of “Letter of Credit Default” is amended by replacing the word “or” in the third line with the word “and”.
- viii. The definition of “Local Business Day” is amended by replacing the word “day” with “Business Day”.
- ix. The definition of “Notification Time” is amended by replacing “11:00, New York” with “10:00 a.m. Pacific Prevailing.”
- x. The definition of “Performance Assurance” is amended by replacing “6(a)(iv)” with “6(a)(iii)”.
- xi. The definition of “Qualified Institution” is amended to read as follows:

“Qualified Institution” means either (A) a commercial bank or financial institution (that is not an Affiliate or a Guarantor of any party to this Agreement) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, and, with respect to both entities identified in clause (A) and (B), having (i) Credit Ratings of at least "A-" by S&P or "A3" by Moody's, and (ii) shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).”

xii. The definition of “Reference Market-maker” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.66 of the Master Agreement as modified in the Cover Sheet.

xiii. The definition of “Secured Party” is amended by replacing “3(b)” with “3(a)”.

**C. Paragraph 3. Calculations of Collateral Requirement.** In Paragraph 3(b)(2), is amended by replacing the comma after “Secured Party” with “and” and by deleting the phrase “, and any Interest Amount that has not yet been Transferred to the Pledging Party”.

**D. Paragraph 4. Delivery of Performance Assurance.** In Paragraph 4, the penultimate sentence is amended by replacing the words “next Local Business Day” with “third Local Business Day thereafter” in clause (i), and by replacing the word “second” with fourth” in clause (ii).

**E. Paragraph 5. Reduction and Substitution of Performance Assurance.** Amend Paragraph 5 as follows:

i. Paragraph 5(a) is amended by deleting the parenthetical “(but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash)” from the first line.

ii. The sixth sentence of Paragraph 5(a) is amended by

1. inserting the word “Local” before “Business Day,” and replacing the words “one (1) Local Business Day” with “three (3) Local Business Days” in clause (i) of that sentence.
2. Replacing the words “two (2) Local Business Days” with “four (4) Local Business Days” in clause (ii) of that sentence.

**F. Paragraph 6. Administration of Performance Assurance. Amend Paragraph 6 as follows:**

iii. Paragraph 6(a)(ii)(A) is amended by inserting “(other than subparagraph (B) below)” after “the provisions of this Paragraph 6(a)(ii)” in the first line thereof.

iv. Paragraph 6(a)(ii)(B) is amended by replacing “Non-Downgraded Party” with “Downgraded Party” in the second sentence of this paragraph.

v. Paragraph 6(a)(iii) is deleted in its entirety and replaced as follows:

Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early



Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount, concurrently with the return of such Cash to the Pledging Party in accordance with the terms of the Agreement. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default; provided that, any Interest Amount that is held by the Secured Party as an additional Performance Assurance amount shall not accrue interest in accordance with this paragraph.

- vi. Paragraph 6(b)(iv) is amended by capitalizing the second instance of the word “cash” in the second sentence.
  - vii. Paragraph 6(b)(v) is amended by deleting the parenthetical phrase “(including but not limited to the reasonable costs, expenses, and attorneys’ fees of the Secured Party)”.
- G. Paragraph 7.** Exercise of Rights Against Performance Assurance. Paragraph 7(b) is amended by deleting it in its entirety and inserting the words “Intentionally Omitted.”.
- H. Paragraph 8. Disputed Calculations. Amend Paragraph 8 as follows:**
- viii. Paragraph 8(a) is amended by adding in the third sentence the phrase “and, provided further, that if no quotations can be obtained, then the Secured Party’s original calculation shall be used” immediately after the words “then that quotation shall be used” and before the “)”.
  - ix. Paragraph 8(b) is amended by (1) adding the words “requested by the Pledging Party” between the word “Assurance” and the phrase “to be reduced”, and (2) adding in the third sentence the phrase “and, provided further that, if no quotations can be obtained, then the Secured Party’s original calculation shall be used” immediately after the words “then that quotation shall be used” and before the “)”.
- I. Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.** Section 9(d) is amended by deleting (i) the parenthetical phrase at the end of the first sentence, which reads, “(including, without limitation costs and reasonable fees and disbursements of counsel)” and (ii) the entire second sentence.
- J. Schedule 1 to Collateral Annex:** Schedule 1 to the Collateral Annex is deleted in its entirety.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 to the Collateral Annex to be duly executed as of the Effective Date of the Agreement.

Party A:	<u><i>{Counterparty Legal Name}</i></u>	Party B:	<u><b>SOUTHERN CALIFORNIA EDISON COMPANY</b></u>
By:	<u></u>	By:	<u></u>
Name:	<u><i>{Name of Authorized Signer}</i></u>	Name:	<u><i>{Name of SCE Signer}</i></u>
Title:	<u><i>{Title of Authorized Signer}</i></u>	Title:	<u><i>{Title of SCE Signer}</i></u>

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# Master Power Purchase & Sale Agreement

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Version 2.1 (modified 4/25/00)  
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# MASTER POWER PURCHASE AND SALES AGREEMENT

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# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement" ) is made as of the following date: \_\_\_\_\_ ("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")

All Notices:

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

### **Invoices:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Scheduling:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Payments:**

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: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Name ("Counterparty" or "Party B")

All Notices:

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

### **Invoices:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Scheduling:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Payments:**

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: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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:

Party A Tariff      Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions      ☐ Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive      ☐ Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies      ☐ Cross Default for Party A:  
☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Cross Default for Party B:  
☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

- ☐ 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)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☐ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☐ 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
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

- ☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

## 8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: \_\_\_\_\_
- ☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ 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 or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_



(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

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**Article 10**

Confidentiality

☐ Confidentiality Applicable      If not checked, inapplicable.

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**Schedule M**

- ☐ Party A is a Governmental Entity or Public Power System
- ☐ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable
- ☐ Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Party B Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

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.

## **GENERAL TERMS AND CONDITIONS**

### **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 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 therefor 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 including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 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, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 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.

6.7 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 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible 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.

## **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 each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and 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 of Default 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 of Default 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 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

**(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” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’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 a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

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

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party 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, 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 the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System 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) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

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

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (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 Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System 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 itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (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.

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 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

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 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

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

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## **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.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

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 therefrom. 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.

## 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)
- |   |                                 |                                |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency                       | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency                      | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent                            | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency<br>(Specify: _____) |                                 |                                |

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

## **ITEM 7B**

### **Desert Community Energy Board September 28, 2022**



#### **STAFF REPORT**

**Subject:** DCE Mid-term Reliability Procurement: Cape Generating Station 1 LLC Geothermal Project

**Contact:** David Freedman, Program Manager ([dfreedman@cvag.org](mailto:dfreedman@cvag.org)) and Jaclyn Harr, The Energy Authority

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**Recommendation:** Adopt Resolution 2022-08, approving a 15-year Renewable Power Purchase Agreement with Cape Generating Station 1 LLC, and authorizing the Executive Director and/or Legal Counsel to make minor modifications before execution of the agreement

**Background:** In October 2021, the DCE Board of Directors approved the release of DCE's Mid-term Reliability Request for Proposals (RFP) to meet the needs required by California Public Utilities Commission (CPUC) Mid-term Reliability procurement order, Decision 21-06-035 from June 2021. This decision requires DCE, like other California load-serving entities (LSEs) including CCAs and Investor-Owned Utilities, to procure resources required to be online between 2023 and 2026 to meet electric system reliability needs. The Mid-term Reliability procurement order is designed to achieve California's ambitious greenhouse gas emissions reduction targets for 2030 and to keep the state on a clear path to meeting the ultimate goal of 100 percent below 1990 levels zero-carbon electricity resources by 2045. Eligible resources include solar, wind, battery storage, geothermal and other renewable resources, as well as demand response resources. The decision also states that the CPUC expects all the resources procured pursuant to that decision to be zero-emitting, unless they otherwise qualify under renewables portfolio standard (RPS) eligibility requirements (biomass, for example).

DCE staff worked with other CCAs on a joint procurement, rather than conducting a stand-alone solicitation. DCE's partners are California Choice Energy Authority (CalChoice), a CCA whose members include the City of Rancho Mirage, and Clean Energy Alliance, a CCA whose members are five cities in northern San Diego County. This collaboration has been mutually beneficial for both DCE and the other CCAs, allowing for efficient use of resources (including joint legal counsel) and an opportunity to potentially obtain better pricing due to larger volumes. The Energy Authority (TEA) is managing the procurement process on behalf of DCE. The joint procurement team issued an RFP in early January seeking projects that meet the basic requirements with a due date of February 4, 2022. A total of 22 developers submitted proposals by the deadline. An evaluation team has reviewed the proposals and provided a recommendation for potential contracts. In June 2022, the DCE Board endorsed its first contract by authorizing the Executive Director to negotiate and execute a 10-year Western Systems Power Pool Resource Adequacy Confirmation with Resi Station, LLC, for resource adequacy benefits from a demand response project. Resi Station is a subsidiary of OhmConnect and aggregates energy savings generated during times of peak demand (such as the early September heat wave) by OhmConnect customers. OhmConnect has partnered with DCE and the Coachella Valley Association of Governments (CVAG), and its customers include DCE customers and Southern California Edison customers in CVAG's area.

The next contract is now ready for Board approval. With this item, staff is recommending a Renewable Power Purchase Agreement (RPPA) with Cape Generating Station 1 LLC, a subsidiary of Fervo Energy (Fervo), for a geothermal project located in Beaver County, Utah. DCE's pro rata share of the project is 3 megawatts (MW) of the 20MW average net capacity over a 15-year period, with an expected commercial operation date (COD) of June 1, 2026.

Fervo's geothermal systems make use of horizontal drilling techniques coupled with Organic Rankine Cycle (ORC) generator systems to deliver zero-carbon, zero-emission electricity. ORC power plants are zero-carbon, zero-emission generators. Thermal energy is supplied at high temperature to the ORC by a heat transfer fluid consisting of geothermal brine. The ORC turbogenerator then converts thermal energy from geothermal fluid into electric energy using a turbine coupled with an electric generator. ORC plants are fully dispatchable and flexible, with extremely fast ramping rates of up to 30 percent of nominal capacity per minute. The project will be eligible for RPS certification and inclusion in DCE's Carbon Free product generation portfolio.

The project will consist of a series of subsurface geothermal wells and a dual-pressure ORC power generating facility. The project's first phase will consist of a total of two "triplets," which is a set of two production wells and one injection well. Each well is drilled in a horizontal direction at depth, dramatically increasing the production and consistency of each well. The result is a total of six wells drilled in a pattern that maximizes reservoir volume and surface area. As shown in the attached schematic, each well in a triplet is drilled to depth, then extended horizontally for 3,000-5,000 in length, enabling capture from many more permeable zones than is generally possible in conventional vertical geothermal wells.

The Cape Generating Station project will be located outside of Milford in Beaver County, Utah, approximately 10-to-15 miles from the Milford Wind Corridor project. That project is connected directly to the Los Angeles Department of Water and Power's (LADWP) Intermountain Power Project (IPP) Station Switchyard via the Milford Wind Line, which is a dedicated transmission line. Fervo anticipates negotiating a private user agreement with the owner of that line and entering into a Large Generator Interconnection Agreement with LADWP for an interconnection at the IPP Station Switchyard.

The RPPA was negotiated by the joint legal counsel for DCE, CalChoice and CEA, with input on specific issues from DCE staff and DCE's legal counsel. The redacted RPPA is available for Board review and approval at the link found at the end of this staff report. Approval of this RPPA will help DCE meet its Mid-term Reliability obligations and reduce price volatility in DCE's power portfolio, thereby providing for increased rate certainty. The joint procurement team continues to work on other agreements. Potential contracts will be brought back for Board approval once the negotiation process is complete.

**Fiscal Analysis:** Under the pricing terms in the RPPA, DCE will pay for the energy generated by the project at a fixed-price rate per MWh (megawatt hour), with a 2 percent annual escalator after the first contract year. All attributes from the project, including energy, Renewable Energy Credits (RECs), and Resource Adequacy (RA), will be available to DCE. The contract currently under consideration reflects pricing that is typical in the current market for new geothermal resources. As the June 2026 COD approaches, the energy costs will be included in DCE's budget.

CPUC Decision 21-06-035 sets out annual procurement amounts for LSEs, with a compliance tranche for long lead time generation projects required to be online no later than June 1, 2026. A total of three developers offered projects that were able to meet this deadline. Relative to other eligible projects offered, the Fervo project was closely aligned with DCE's procurement needs for 2026 and is expected to reduce the overall costs for compliance with the decision. TEA estimates that the Fervo project should result in cost savings of more than \$1.78 million compared to the next most viable project offered.

**Attachments:**

1. Resolution 2022-08
2. Project schematic
3. Map showing Cape Generating Station location
4. Link to PPA: <https://desertcommunityenergy.org/wp-content/uploads/2022/09/DCE-20220919-7Cd-Fervo-PPA-redacted.pdf>



## RESOLUTION NO. 2022-08

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF DESERT COMMUNITY ENERGY APPROVING A 15-YEAR RENEWABLE POWER PURCHASE AGREEMENT WITH CAPE GENERATING STATION 1 LLC**

A. Desert Community Energy (“DCE”) is a joint powers authority established on October 30, 2017 for the purpose of implementing community choice aggregation (“CCA”) programs under Public Utilities Code section 366.2.

B. DCE is required under California Public Utilities Commission (“CPUC”) Mid-Term Reliability procurement requirements, Decision 21-06-035, to procure resources required to be online between 2023 and 2026 to meet electric system reliability needs. In order to meet State of California greenhouse gas emissions reduction targets, the CPUC requires all resources procured in satisfaction of its Mid-Term Reliability decision to be zero-emitting, unless they otherwise qualify under renewables portfolio standard (RPS) eligibility requirements.

C. DCE partnered with California Choice Energy Authority and the Clean Energy Alliance in a joint procurement whereby the three CCAs issued a Request for Offers in January 2022 to negotiate a renewable power purchase agreement in satisfaction of the CPUC’s Mid-Term Reliability requirements.

D. The CCAs have negotiated a 15-year renewable power purchase agreement with Cape Generating Station 1, LLC to purchase 20 MW of energy on a long-term basis from a geothermal project with an expected commercial operation date of June 1, 2026. DCE’s pro-rata share of the project is 3 MW.

E. Under Section 2.5.1 of the DCE Joint Powers Agreement, the DCE Board of Directors has the power to make and enter into all contracts, including, but not limited to, service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs including the acquisition of electric power supply and the provision of retail and regulatory support services.

F. DCE staff recommends the approval of the 15-year renewable power purchase agreement with Cape Generating Station 1, LLC, and the Board has received information and had discussion regarding the terms of the agreement.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DESERT COMMUNITY ENERGY, AS FOLLOWS:**

Section 1. Approval of Power Purchase Agreement. The Board of Directors hereby approves the 15-year *Renewable Power Purchase Agreement* with Cape Generating Station 1, LLC.

Section 2. Delegation to Executive Director. The Board of Directors hereby authorizes the DCE Executive Director to negotiate, finalize and execute the power purchase agreement in substantially similar form as approved to form by the General Counsel.

Section 3. Resolution Effective Date. This resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** at a meeting of the Board of Directors of Desert Community Energy held on September 28, 2022.

ATTEST:

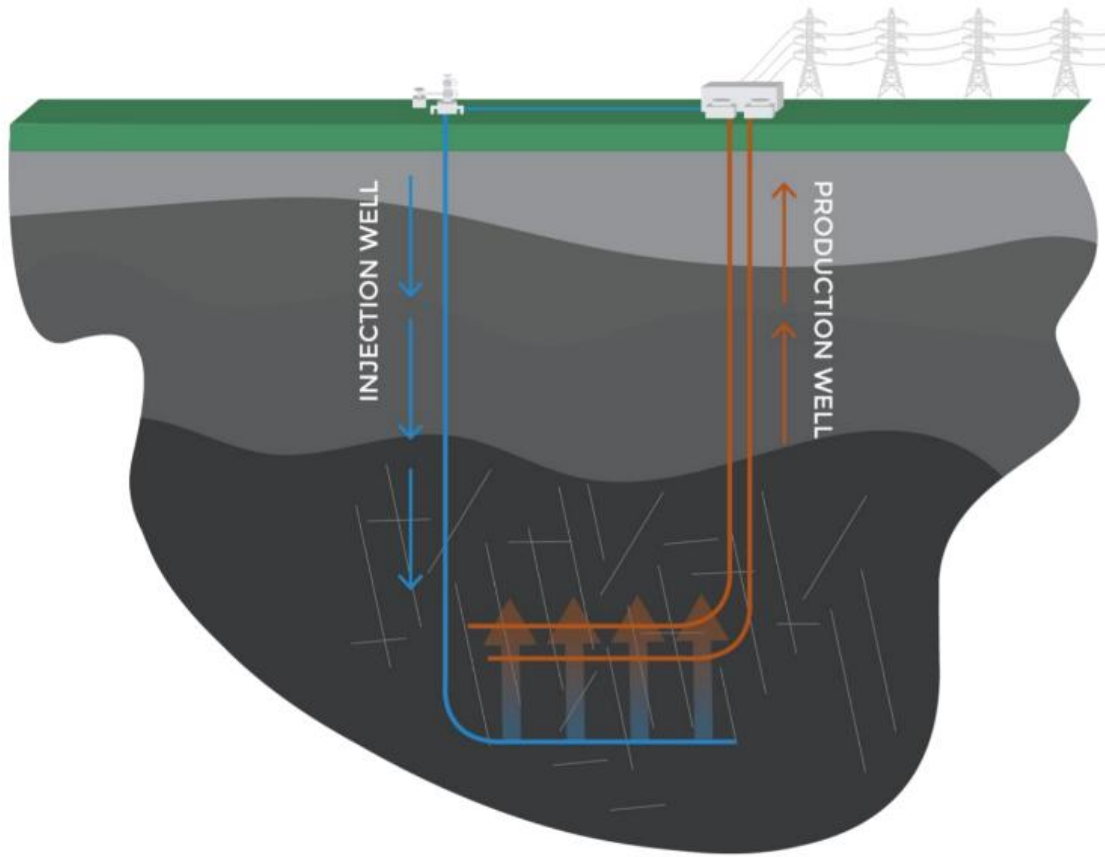
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Geoff Kors, Chair  
Desert Community Energy

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Tom Kirk, Secretary  
Desert Community Energy

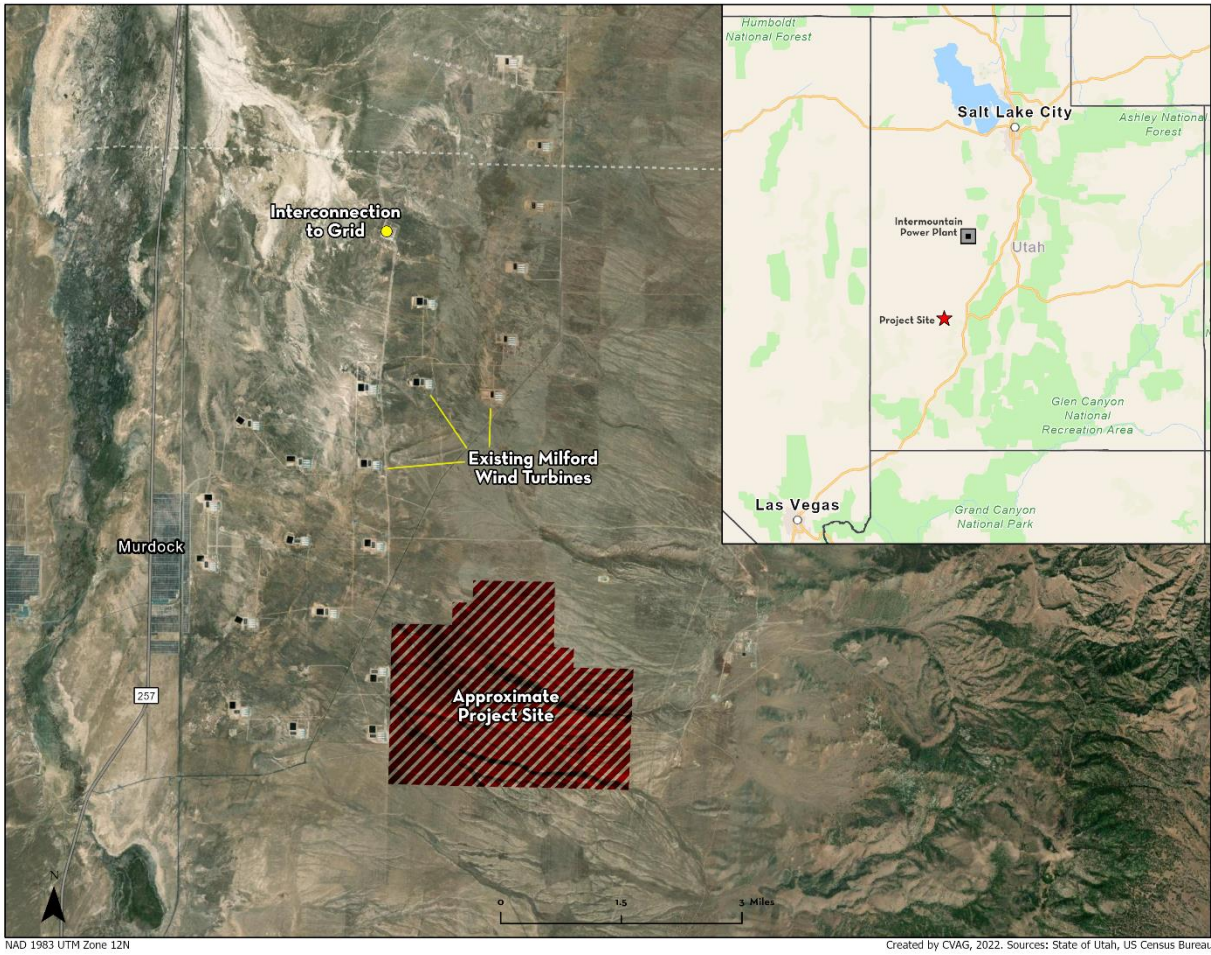
AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

ABSTAIN:

## Project Schematic




# Project Location



**ITEM 8A**

**DESERT COMMUNITY ENERGY BOARD  
FY2022-2023 ATTENDANCE RECORD**

<b>Voting Members</b>	<b>JUL*</b>	<b>AUG</b>	<b>SEP</b>	<b>OCT</b>	<b>NOV</b>	<b>DEC</b>	<b>JAN</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>	<b>MAY</b>	<b>JUNE</b>
City of Palm Desert	✓	*										
City of Palm Springs	✓	*										

Absent   
No Meeting \*

\* July was a special meeting. The regular July meeting was cancelled.

**DESERT COMMUNITY ENERGY**  
**UNAUDITED FINANCIAL STATEMENTS**  
**STATEMENT OF NET POSITION**  
**AS OF JUNE 30, 2022**

	<u>GENERAL</u>	<u>PALM SPRINGS</u>	<u>TOTAL</u>
<b><u>ASSETS</u></b>			
Unrestricted Funds			
Operating Account	-	413,441.31	413,441.31
Money Market Account	68,281.53	-	68,281.53
ICS Account	-	-	-
DDM Marketplace Sweep Account	1,487,450.79	-	1,487,450.79
Lockbox Account	2,146,675.83	(2,144,914.42)	1,761.41
Total Unrestricted Funds	3,702,408.15	(1,731,473.11)	1,970,935.04
Restricted Funds			
Restricted Cash (PPA Collateral)	-	1,680,000.00	1,680,000.00
SCE FSR Letter of Credit Collateral	147,000.00	-	147,000.00
Total Restricted Funds	147,000.00	1,680,000.00	1,827,000.00
Total Cash	3,849,408.15	(51,473.11)	3,797,935.04
Accounts Receivable			
Southern California Edison	-	8,612,849.68	8,612,849.68
Southern California Edison (Escrow Account) <sup>(1)</sup>	-	767,298.58	767,298.58
Total Accounts Receivable	-	9,380,148.26	9,380,148.26
Accrued Accounts Receivable	-	2,552,840.75	2,552,840.75
Allowance for Doubtful Accounts <sup>(2)</sup>	-	(1,801,441.96)	(1,801,441.96)
Prepaid Expenses			
Coachella Hills Wind	-	130,814.88	130,814.88
Deluxe Corporation	-	1,200.00	1,200.00
Total Prepaid Expenses	-	132,014.88	132,014.88
<b>TOTAL ASSETS</b>	<b>3,849,408.15</b>	<b>10,212,088.82</b>	<b>14,061,496.97</b>
<b><u>LIABILITIES</u></b>			
Accounts Payable			
Ace Printing	2,813.55	2,813.55	5,627.09
Best, Best & Kreiger LLP	5,065.59	15,196.76	20,262.34
Burke Rix Communications	-	7,691.71	7,691.71
CA Choice Energy Authority	-	7,552.33	7,552.33
Calpine Energy Solutions LLC	-	44,196.80	44,196.80
Donald D. Dame	1,119.56	3,358.69	4,478.25
Davis Farr LLP	195.00	585.00	780.00
River City Bank	6,840.96	-	6,840.96
The Energy Authority	-	4,261,439.02	4,261,439.02
Vesper Energy	-	119,294.95	119,294.95
Total Accounts Payable	16,034.65	4,462,128.80	4,478,163.45
Accrued Accounts Payable			
So Cal Edison	-	58,430.66	58,430.66
Total Accounts Payable	-	58,430.66	58,430.66
Due to Other Governments			
Coachella Valley Association of Governments	78,829.41	236,488.23	315,317.64
Utility Users Tax- Palm Springs	-	283,756.60	283,756.60
Electric Energy Surcharge (CDTFA)	-	27,804.00	27,804.00
Total Due to Other Governments	78,829.41	548,048.83	626,878.24
NEM Escrow Account			
NEM Customers	-	6,669.59	6,669.59
Total NEM Escrow Accounts	-	6,669.59	6,669.59
Taxes Payable			
Utility Users Tax	-	116,678.05	116,678.05
Electric Energy Surcharge	-	4,814.82	4,814.82
Total Taxes Payable	-	121,492.87	121,492.87
PPA Collateral			
Terra-Gen	-	1,680,000.00	1,680,000.00
Total PPA Collateral	-	1,680,000.00	1,680,000.00
Loans Payable (long term)			
River City Bank Line of Credit (expires 02.01.2025)	-	2,200,000.00	2,200,000.00
Total Loans Payable	-	2,200,000.00	2,200,000.00
<b>TOTAL LIABILITIES</b>	<b>94,864.06</b>	<b>9,076,770.75</b>	<b>9,171,634.81</b>
<b><u>NET POSITION</u></b>			
Restricted Net Position	147,000.00	-	147,000.00
Unrestricted Net Position	3,607,544.09	1,135,318.07	4,742,862.16
Net Position	3,754,544.09	1,135,318.07	4,889,862.16
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>3,849,408.15</b>	<b>10,212,088.82</b>	<b>14,061,496.97</b>

(1) Net Energy Metering customers' usage is monitored on a monthly basis, recorded in an escrow account and trued-up at the end of each customer's relevant period.

- If the NEM customer generated more electricity than used, DCE will pay the NET balance at DCE's approved Net Surplus Compensation Rate; if the NEM customer used more electricity than generated, the net annual balance will be billed at the customer's metered rate.

(2) \$609,655 for the California Arrearage Payment Program (CAPP) allocation for COVID-19 relief bill has been credited to customer accounts and funds received by DCE.

**DESERT COMMUNITY ENERGY**  
**UNAUDITED FINANCIAL STATEMENTS**  
**REVENUES, EXPENSES, AND CHANGES IN NET POSITION**  
**FOR THE PERIOD FROM JULY 1, 2021 TO JUNE 30, 2022**

	<u>GENERAL</u>	<u>PALM SPRINGS</u>	<u>TOTAL</u>
<b><u>REVENUES</u></b>			
Electricity Sales <sup>(1)</sup>	-	44,192,371.90	44,192,371.90
Energy Market Settlements	-	1,354,851.08	1,354,851.08
Other Revenue <sup>(2)</sup>	-	609,655.00	609,655.00
Investment Income	4,103.57	-	4,103.57
<b>TOTAL REVENUES</b>	<b>4,103.57</b>	<b>46,156,877.98</b>	<b>46,160,981.55</b>
<b><u>EXPENSES</u></b>			
Cost of Electricity			
Electricity Purchase	-	26,854,313.57	26,854,313.57
Resource Adequacy	-	7,224,061.25	7,224,061.25
Low Carbon Settlement	-	2,381,000.00	2,381,000.00
Renewable Energy Credit Settlement	-	1,354,095.20	1,354,095.20
Market Charges	-	4,591,524.13	4,591,524.13
Total Cost of Electricity	-	42,404,994.15	42,404,994.15
Accounting / Bank Services	15,872.48	15,872.48	31,744.95
Office Supplies	-	-	-
Legal Services	23,278.83	69,836.50	93,115.33
Professional Services			
AJ Gallagher & Co Insurance	175.00	175.00	350.00
Brown & Riding Insurance	58.13	58.13	116.25
Davis Farr LLP	1,557.50	4,672.50	6,230.00
PFM Financial Advisors LLC	1,710.00	1,710.00	3,420.00
SOCAL Edison	-	43,430.66	43,430.66
Total Professional Services	3,500.63	50,046.29	53,546.91
Insurance			
- Directors & Officers	3,595.00	3,595.00	7,190.00
- General Liability	301.63	301.63	603.25
Total Insurance	3,896.63	3,896.63	7,793.25
Consultants			
Calpine Energy Solutions	119,050.59	357,151.76	476,202.35
Don Dame	-	26,146.75	26,146.75
White Rabbit Group	975.00	975.00	1,950.00
The Energy Authority	-	1,174,086.85	1,174,086.85
CVAG	311,256.51	311,256.51	622,513.01
Total Consultants	431,282.09	1,869,616.87	2,300,898.96
Outreach			
Burke Rix Communications	-	46,199.07	46,199.07
Total Outreach	-	46,199.07	46,199.07
Postage			
Ace Printing	9,200.49	9,200.49	18,400.98
Total Printing	9,200.49	9,200.49	18,400.98
Printing			
Ace Printing	10,317.19	10,317.19	20,634.37
Total Printing	10,317.19	10,317.19	20,634.37
Social Programs	-	32,214.55	32,214.55
Technology Costs	1,106.32	1,106.32	2,212.64
Registrations/Memberships			
Western Renewable Energy Generation Information System (WREGIS)	-	125.00	125.00
CA Community Choice Association	21,123.63	63,370.88	84,494.50
Total Registration/Memberships	21,123.63	63,495.88	84,619.50
Bad Debt	-	1,325,790.00	1,325,790.00
Interest Expense	-	123,816.07	123,816.07
<b>TOTAL EXPENSES</b>	<b>519,578.27</b>	<b>46,026,402.46</b>	<b>46,545,980.73</b>
Excess of Revenues over Expenses	(515,474.70)	130,475.52	(384,999.18)
Net Position - Beginning of the Period	4,270,018.79	1,004,842.55	5,274,861.34
Net Position - End of the Period	3,754,544.09	1,135,318.06	4,889,862.16

(1) Electricity sales revenue includes revenues actually billed to customers as well as estimated customer usage during the reporting period that is not yet billed.

(2) California Arrearage Payment Program (CAPP) allocation for COVID-19 relief bill.

# Desert Community Energy

## Unaudited Statement of Net Position Prev Year Comparison

### As of June 30, 2022

	Jun 30, 22	Jun 30, 21	\$ Change	% Change
<b>ASSETS</b>				
Current Assets				
Checking/Savings				
1100 · Unrestricted Funds				
1105 · Operating Account -8099	413,441.31	306,699.27	106,742.04	34.8%
1107 · ICS Account -0995	0.00	818,389.06	-818,389.06	-100.0%
1109 · DDM Marketplace Sweep - 0991	1,487,450.79	0.00	1,487,450.79 <sup>1</sup>	100.0%
1115 · Lockbox -4446	1,761.41	1,894,370.42	-1,892,609.01	-99.9%
Total 1100 · Unrestricted Funds	1,902,653.51	3,019,458.75	-1,116,805.24	-37.0%
1199 · Restricted Funds				
1110 · Money Market -5470	1,748,281.53	1,845,439.94	-97,158.41	-5.3%
1120 · FSR Letter of Credit Collateral	147,000.00	147,000.00	0.00	0.0%
1125 · Debt Service Reserve Account	0.00	200,000.00	-200,000.00	-100.0%
Total 1199 · Restricted Funds	1,895,281.53	2,192,439.94	-297,158.41	-13.6%
Total Checking/Savings	3,797,935.04	5,211,898.69	-1,413,963.65	-27.1%
Accounts Receivable				
1221 · Accounts Receivable	9,380,148.26	8,752,753.81	627,394.45	7.2%
1223 · Accrued Accounts Receivable	2,552,840.75	0.00	2,552,840.75 <sup>2</sup>	100.0%
Total Accounts Receivable	11,932,989.01	8,752,753.81	3,180,235.20	36.3%
Other Current Assets				
1225 · Allowance for Doubtful Accounts	-1,801,441.96	-1,085,306.96	-716,135.00	-66.0%
1240 · Prepaid Expenses	132,014.88	0.00	132,014.88 <sup>3</sup>	100.0%
Total Other Current Assets	-1,669,427.08	-1,085,306.96	-584,120.12	-53.8%
Total Current Assets	14,061,496.97	12,879,345.54	1,182,151.43	9.2%
<b>TOTAL ASSETS</b>	<b>14,061,496.97</b>	<b>12,879,345.54</b>	<b>1,182,151.43</b>	<b>9.2%</b>
<b>LIABILITIES &amp; EQUITY</b>				
Liabilities				
Current Liabilities				
Accounts Payable				
2110 · Accounts Payable	4,478,163.45	3,255,094.75	1,223,068.70	37.6%
2112 · Accrued Accounts Payable	58,430.66	118,247.44	-59,816.78	-50.6%
2120 · Due to Other Governments	626,878.24	563,920.88	62,957.36	11.2%
Total Accounts Payable	5,163,472.35	3,937,263.07	1,226,209.28	31.1%
Other Current Liabilities				
2115 · NEM Escrow Account	6,669.59	0.00	6,669.59	100.0%
2230 · Taxes payable	121,492.87	322,221.13	-200,728.26	-62.3%
2250 · Loans Payable Short-Term	0.00	1,500,000.00	-1,500,000.00 <sup>4</sup>	-100.0%
2260 · Vendor security deposits	0.00	165,000.00	-165,000.00	-100.0%
Total Other Current Liabilities	128,162.46	1,987,221.13	-1,859,058.67	-93.6%
Total Current Liabilities	5,291,634.81	5,924,484.20	-632,849.39	-10.7%
Long Term Liabilities				
2300 · Non-current Liability				
2262 · PPA Development security	1,680,000.00	1,680,000.00	0.00	0.0%
2350 · Loans Payable - Long Term	2,200,000.00 <sup>5</sup>	0.00	2,200,000.00	100.0%



**Desert Community Energy**  
**Unaudited Statement of Net Position Prev Year Comparison**  
**As of June 30, 2022**

	Jun 30, 22	Jun 30, 21	\$ Change	% Change
<b>Total 2300 · Non-current Liability</b>	3,880,000.00	1,680,000.00	2,200,000.00	131.0%
<b>Total Long Term Liabilities</b>	3,880,000.00	1,680,000.00	2,200,000.00	131.0%
<b>Total Liabilities</b>	9,171,634.81	7,604,484.20	1,567,150.61	20.6%
<b>Equity</b>				
<b>31000 · Restricted Net Position</b>	147,000.00	347,000.00	-200,000.00	-57.6%
<b>32000 · Unrestricted Net Position</b>	5,127,861.34	6,874,067.78	-1,746,206.44	-25.4%
<b>Net Income</b>	-384,999.18	-1,946,206.44	1,561,207.26	80.2%
<b>Total Equity</b>	4,889,862.16	5,274,861.34	-384,999.18	-7.3%
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>14,061,496.97</b>	<b>12,879,345.54</b>	<b>1,182,151.43</b>	<b>9.2%</b>

**Desert Community Energy**  
**Unaudited Statement of Net Position Prev Year Comparison**  
**As of June 30, 2022**

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1. RCB transitioned the ICS Account funds to DDM interest bearing account with automated sweep function to maintain \$200k balance in the Operating Account.
2. Separated accrual for unbilled energy out of the A/R for billed charges.
3. Coachella Hills Wind Credit Memos that will be funded in FY2023.
4. River City Bank Line of Credit expired 12/31/2021.
5. Outstanding balance of River City Bank \$8m Line of Credit expiring 02/01/2025.

# Desert Community Energy

## Unaudited Changes to Net Position Prev Year Comparison

### July 2021 through June 2022

	Jul '21 - Jun 22	Jul '20 - Jun 21	\$ Change	% Change
<b>Income</b>				
5010 · Electricity Sales				
5011 · Carbon Free	37,283,543.53	29,383,857.61	7,899,685.92	26.9%
5012 · Carbon Free- CARE / FERA	1,728,615.43	4,023,403.35	-2,294,787.92	-57.0%
5013 · Desert Saver	5,180,212.94	2,600,880.82	2,579,332.12	99.2%
5014 · NEM-Carbon Free	0.00	218,053.07	-218,053.07	-100.0%
5015 · NEM-Carbon Free-CARE/FERA	0.00	809.09	-809.09	-100.0%
5016 · NEM-Desert Saver	0.00	1,686.43	-1,686.43	-100.0%
5017 · Bad Debt	0.00	0.00	0.00	0.0%
<b>Total 5010 · Electricity Sales</b>	<b>44,192,371.90</b>	<b>36,228,690.37</b>	<b>7,963,681.53</b>	<b>22.0%</b>
5100 · Other Revenue				
5120 · Energy Market Settlements	1,354,851.08	837,975.39	516,875.69	61.7%
5130 · CARE/FERA Customer Captation	0.00	40.00	-40.00	-100.0%
5140 · Delay Damages PPAs	0.00	89,100.00	-89,100.00	-100.0%
5150 · Other revenue	609,655.00	158.15	609,496.85	385,391.6%
<b>Total 5100 · Other Revenue</b>	<b>1,964,506.08</b>	<b>927,273.54</b>	<b>1,037,232.54</b>	<b>111.9%</b>
5900 · Investment Income	4,103.57	14,003.76	-9,900.19	-70.7%
<b>Total Income</b>	<b>46,160,981.55</b>	<b>37,169,967.67</b>	<b>8,991,013.88</b>	<b>24.2%</b>
<b>Gross Profit</b>	<b>46,160,981.55</b>	<b>37,169,967.67</b>	<b>8,991,013.88</b>	<b>24.2%</b>
<b>Expense</b>				
4100 · Cost of Electricity				
4105 · Electricity Purchase	26,854,313.57	18,329,516.14	8,524,797.43	46.5%
4110 · Resource Adequacy Settlement	7,224,061.25	7,035,492.20	188,569.05	2.7%
4115 · Low Carbon Settlement	2,381,000.00	1,393,690.00	987,310.00	70.8%
4120 · Renewable Energy Cr. Settlement	1,354,095.20	3,562,681.11	-2,208,585.91	-62.0%
4125 · Market Charges	4,591,524.13	5,206,917.32	-615,393.19	-11.8%
<b>Total 4100 · Cost of Electricity</b>	<b>42,404,994.15</b>	<b>35,528,296.77</b>	<b>6,876,697.38</b>	<b>19.4%</b>
4200 · Accounting / Bank Services	31,744.95	22,417.80	9,327.15	41.6%
4353 · Insurance	7,793.25	6,500.00	1,293.25	19.9%
4423 · Office Supplies	0.00	1,199.43	-1,199.43	-100.0%
4425 · Legal Services	93,115.33	0.00	93,115.33	100.0%
4431 · Professional Services	53,546.91	117,626.41	-64,079.50	-54.5%
4432 · Consultants	2,300,898.96	2,265,580.30	35,318.66	1.6%
4433 · Outreach Services	46,199.07	0.00	46,199.07	100.0%
4435 · Technology Costs (IT)	2,212.64	0.00	2,212.64	100.0%
4440 · Postage	18,400.98	4,583.95	13,817.03	301.4%
4441 · Printing	20,634.37	6,963.74	13,670.63	196.3%
4455 · Customer Programs	32,214.55	0.00	32,214.55	100.0%
4500 · Registrations/Memberships	84,619.50	76,715.00	7,904.50	10.3%
4610 · Interest Expense	123,816.07	17,499.24	106,316.83	607.6%
4750 · Bad Debt Expense	1,325,790.00	1,068,791.47	256,998.53	24.1%
<b>Total Expense</b>	<b>46,545,980.73</b>	<b>39,116,174.11</b>	<b>7,429,806.62</b>	<b>19.0%</b>
<b>Net Income</b>	<b>-384,999.18</b>	<b>-1,946,206.44</b>	<b>1,561,207.26</b>	<b>80.2%</b>

**Desert Community Energy**  
**Unaudited Changes to Net Position Prev Year Comparison**  
**July 2021 through June 2022**

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1. California Arrearage Payment Program (CAPP) allocation for the COVID-19 relief bill.
2. SCE customer assistance programs: COVID-19 Bill Assistance Program and Arrearage Management Plan (AMP).
3. Interest on outstanding balance of River City Bank \$8m Line of Credit expiring 02/01/2025.
4. FY2022 Legal and Outreach Services were reclassified from Consultants.