**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

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| Appeal of City of San Jose, administrator of San Jose Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division | PROCEEDING: K.19-03-024 |

**EXHIBITS 1-50**


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April 25, 2025

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**EXHIBIT: SJCE # 1**
**CPUC PROCEEDING: K.19-03-024**
**WITNESS: SJCE/JEANNE M. SOLE/**
**PREPARED TESTIMONY IN**
**SUPPORT OF SJCE'S APPEAL DATE**
**IDENT. 04/22/25 RECD. 04/22/25**
**ALJ: GERALD F. KELLY**

# PREPARED TESTIMONY OF JEANNE M. SOLE

**in Support of the**
**Appeal of City of San José, administrator of San José Clean Energy,**
**to Citation E-4195-0052 issued on February 27, 2019 by**
**Consumer Protection and Enforcement Division**

**Before the Public Utilities Commission of the State of California**

San José, California
March 25, 2025

## I. Introduction and Witness Qualifications.

**1.** My name is Jeanne M. Solé. I am employed by San José Clean Energy ("SJCE"), a Community Choice Aggregator ("CCA"), administered by the City of San José, as Principal Power Resources Specialist. I have been in this position since July of 2024. Prior to that, I was Deputy Director of Power Resources for SJCE, since May of 2018. My office is located in the City of San José, California.

**2.** Prior to my employment by SJCE, I worked for the City and County of San Francisco, the California Independent System Operator ("CAISO"), Hagler Bailly Services Inc, Grueneich Resource Advocates, and the Conservation Law Foundation. I have over thirty years of experience in the electric industry advising and representing electric utilities, governments, electric customers, and environmental groups, nationally and internationally, at the Federal, State and local levels, assisting customers and utilities to contract for electric products and services, and tracking, reviewing, commenting on and interpreting Federal, state and local laws, regulations and guidelines pertaining to the electric industry.

**3.** In my current capacity as Principal Power Resources Specialist, I lead long-term power procurement and undertake special projects for SJCE.

**4.** In my former capacity as Deputy Director of Power Resources of SJCE, I supervised and directed SJCE's procurement for all power resources, including those required to comply with California's resource adequacy ("RA") requirements.

**5.** I submit this prepared direct testimony based on my own knowledge, or on basis of information or belief, and as to those matters, I believe them to be true.

## II. The Procedural Background and Amount of Time that has Elapsed Since the Penalty Was Assessed Have Prejudiced San José Clean Energy's Ability to Litigate this Appeal.

**6.** On February 15, 2019, the California Public Utilities Commission (the "Commission" or "CPUC") issued SJCE a "Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050" assessing a total penalty for System and Flexible RA deficiency of $6,811,155.10, and on February 27, 2019 the Commission issued another "Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as

Modified by Decisions 10-06-036, 11-06-022 and 14-06-050" (the "Citation") revising the total penalty for System and Flexible RA deficiency to $6,791,155.40 (the "Penalty").[1]

**7.** On March 29, 2019, the City of San José timely filed a Notice of Appeal,[2] and following a prehearing conference held on April 29, 2019, the Administrative Law Judge ("ALJ") issued Administrative Law Judge's Ruling Setting Proceeding Scope and Schedule on October 14, 2019 (the "Scoping Ruling").

**8.** The Scoping Ruling did not invite the parties to identify or address the evidence they intended to present, and nothing in the Scoping Ruling suggested that the parties would thereafter be precluded from asserting or identifying facts to support their arguments. On November 5, 2019, the parties submitted briefs responding to the legal questions listed in the Scoping Ruling, and on November 12, they submitted reply briefs.[3]

**9.** On April 17, 2020, the ALJ issued Administrative Law Judge's Ruling on Threshold Issues (K.19-03-024) which concluded that the multi-factor state and federal constitutional tests should be considered in the appeal of SJCE's Penalty but decided that an evidentiary hearing was not needed because there were no contested material factual issues in this proceeding.

**10.** On May 4, 2020, SJCE filed a motion for reconsideration ("SJCE's Motion"), asking the Commission to reassess its April Ruling and proceed with an evidentiary hearing based on statutory and due process rights, since nothing in the Scoping Ruling indicated that the first round of briefs were the only opportunity that SJCE would have to present evidence or, that otherwise, its rights to a full and meaningful consideration of any facts asserted or identified to support its arguments would be waived. SJCE's Motion was denied in a ruling dated June 9, 2020 ("June Ruling"), in which the ALJ reasoned that "[t]he purpose for presenting evidence is to persuade the decisionmaker of the truth of asserted facts. Here, SJCE's

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[1] The difference is based on the Commission recalculating the penalty to reduce the System RA penalty by $10,000 for assessing the System RA deficiency for both the July and September months, and miscalculating the penalties assessed on SJCE's deficiency for Flexible RA in January and February, by $5,000 for each of those months under a strict application of the penalty. (See Citation for Violation of Resource Adequacy Reporting Requirements Under Resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050 (2-15-19) and Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050 (2-27-19).)

[2] *See* Docket of K.19-03-024.

[3] *Id*.

asserted facts are not in dispute. Rather, they are assumed to be true. Accordingly, there is no due process cause for or right to evidentiary hearing on these facts."[4]

**11.** On June 16, 2020, the Commission issued Draft Resolution ALJ-382, which denied SJCE's appeal. SJCE submitted comments on the draft resolution on July 14, 2020. The Comments pointed out that the Draft Resolution failed to proceed in the manner required by law, adopted findings that are not supported by substantial evidence, constituted an abuse of the Commission's discretion, and violated SJCE's constitutional rights. The Draft Resolution was amended to include findings about SJCE's procurement efforts after the Year Ahead ("YA") compliance deadline. The amended Draft Resolution also included written responses to SJCE's comments. After being held twice, on September 10, the Commission voted to approve the Resolution.

**12.** SJCE paid the entire Citation Penalty amount of $6,791,155.40, with the Commission indicating that payment was received on October 6, 2020.[5]

**13.** On October 12, 2020, SJCE filed its Application of The City of San José, Administrator of San José Clean Energy, For Rehearing of Resolution ALJ-382.

**14.** On December 17, 2021, Decision ("D").21-12-066 - Order Granting Rehearing Of Resolution AL-382 and Vacating Resolution was issued.

**15.** On December 6, 2024, Chief ALJ Michell Cooke filed a Notice of Reassignment, reassigning the Appeal from Citation K.19-03-024 from ALJ Hallie Yacknin to ALJ Gerald F. Kelly.[6]

**16.** On January 15, 2025, ALJ Kelly issued Administrative Law Judge's Ruling Setting Citation Appeal Hearing and Other Directives,[7] which identified the issues from D.21-12-066 to be addressed at the Hearing, specifically:

> Rehearing is granted to give SJCE the opportunity to prove its assertion, that had it accepted the offers that were subsequently withdrawn while SJCE was vetting their terms, it still would have had a deficiency that could not have been filled because there was no other system or flexible RA available. In addition, SJCE shall have an opportunity to present evidence to address the penalty factors such as the entity's financial resources.

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[4] *See* June Ruling, at 2.

[5] *A*cknowledgment of that payment can be found at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/2025/jan-2025-ueb-energy-citations.pdf.

[6] *See* Docket (K.19-03-024).

[7] Administrative Law Judge's Ruling Setting Citation Appeal Hearing and Other Directives (January 15, 2025) (K.19-03-024), at 3.

That Ruling set hearing dates for April 22-24, 2025.

**17.** During the time that has elapsed from when SJCE was initially issued the Citation (February 15, 2019) for 2019 RA deficiencies it began procuring in 2018, until ALJ Kelly's Ruling Setting Citation Appeal Hearing, (January 15, 2025), SJCE has experienced staffing changes including personnel turnover and attrition.[8] Additionally, potential witnesses have since become unavailable due to the passage of time, and memories have faded.

## III. The Structure of SJCE.

**18.** As a single jurisdiction CCA, SJCE is operated by the City of San José, a California Charter City, with the San José City Council as our governing body and ratemaking authority. As a City program, SJCE must operate pursuant to the City's Municipal Code, part of which. controls power procurement. The Municipal Code provided that "[b]ased on forecasted needs, the City may enter into contracts to procure Power Products for a term up to 25 years, under bilateral agreements, net energy metering, Feed-in-Tariffs or through a competitive bidding process." Under the Municipal Code, "speculative buying of power products on behalf of SJCE is prohibited."[9] That prohibition extends to the "purchase or sale of Power Products not reasonably anticipated to be used for meeting forecasted retail loads, commercial commitments, risk management, regulatory requirements, or to achieve City Council goals at the time of the agreement."[10]

**19.** On August 29, 2017, San José City Council approved SJCE's implementation plan.[11] On January 30, 2018, San José City Council approved revisions to the launch schedules to September 1, 2018 for municipal accounts, and March 1, 2019 for the remainder of San José's residents and businesses.[12] On November 6, 2018 San José City Council revised the

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[8] *See* SJCE's Notice of Change of Handling Attorney (K.19-03-024), filed February 10, 2025.

[9] *See* Section 2.5 of the City's Energy Risk Management Policy, attached as Exhibit A to Resolution No. 78574 (April 19, 2018), found at: https://records.sanjoseca.gov/Resolutions/RES78574.pdf; *see also* Section 26.50.020 of Ordinance 30028 (December 29, 2017), found at: https://records.sanjoseca.gov/Ordinances/30028.pdf.

[10] *See* Section 26.10.120 of Ordinance 30028 (December 29, 2017), found at: https://records.sanjoseca.gov/Ordinances/30028.pdf.

[11] *See* Ordinance 29988 (August 29, 2017), found at: https://records.sanjoseca.gov/Ordinances/29988.pdf.

[12] *See* January 26, 2018 San Jose Community Energy Department Status Update Memorandum, from Lori Mitchell to the Mayor and City Council, found at: https://sanjose.legistar.com/View.ashx?M=F&ID=5753096&GUID=479D1DBE-C041-4096-9A5E-3CD2575FE763.

phase in plan to phase in all but San José's small commercial and NEM customers in February 2019.[13]

**20.** On May 1, 2018, San José City Council adopted Resolution No.: 78574, providing for Energy Risk Management Policies (the "Policies") to govern procurement of power products for SJCE.[14] The Policies called for creation of an internal Risk Oversight Committee ("ROC"), comprised of executive-level city employees with specialized knowledge of power procurement, finance, and risk operations.[15] The ROC was "responsible for overseeing compliance with risk management policies within SJCE," and served "as the highest level of organizational risk management."

**21.** The Policies also provided for ROC adoption of Energy Risk Management Regulations ("ERMR"). SJCE operated pursuant to draft ERMR when it commenced transacting in 2018. On March 20, 2019, March 19, 2019, and May 14, 2019, the ROC adopted changes to the draft ERMR, to facilitate SJCE meeting state requirements and other needs. On October 3, 2019, the ROC adopted a full set of ERMR.

**22.** In May of 2018, the City of San José, as administrator of SJCE, contracted with the Northern California Power Agency ("NCPA") to provide Scheduling Coordinator services and assist with procurement, including undertaking power and RA solicitations consistent with SJCE's direction, among other wholesale energy services.[16]

## IV. SJCE's RA procurement efforts prior to October 31, 2018.

**23.** When I joined SJCE, based on my experience and the experience of employees of SJCE and NCPA, I, along with my industry colleagues, expected RA to be limited in 2019, so I directed NCPA to prioritize SJCE solicitations for RA over those for Renewable Portfolio Standard ("RPS"), greenhouse gas-free, and energy resources.

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[13] *See* Item 7.1 on the November 6, 2019, City Council Agenda, found at: https://sanjose.legistar.com/View.ashx?M=M&ID=610824&GUID=30880974-2ABD-43AF-B478-D389F066D8C7.

[14] A copy of Resolution No. 78574 can be found at: https://records.sanjoseca.gov/Resolutions/RES78574.pdf.

[15] *See* Resolution No. 78574, supra, Exhibit A, Section 4.4: "The ROC shall consist of seven voting members: the City Manager, the Director of Community Energy, the Director of Finance, the City's Risk Manager, the Budget Director, the Community Energy Department's Deputy Director of Power Resources, and the Community Energy Department's Division Manager for Administration and Finance."

[16] A copy of that agreement can be found at: https://records.sanjoseca.gov/Contracts/CON663333-000.pdf.

**24.** On June 26, 2018, NCPA issued a solicitation on behalf of SJCE for 2018 RA. SJCE procured all the RA required to comply with its obligations under the program in for 2018.

**25.** Before October 31, 2018, at my direction and on behalf of SJCE, NCPA issued four solicitations for 2019 RA: on July 11, 2018; September 7, 2018; October 11, 2018; and October 23, 2018.[17]

**26.** All of these solicitations were sent out to over forty (40) recipients (the number of recipients may have evolved somewhat over time as SJCE and NCPA became aware of additional potential sellers)[18]; solicitations were also placed on SJCE's new website once created and launched.[19]

**27.** At the conclusion of its first 2019 RA solicitation in late July 2018, SJCE obtained responses that would meet all of its 2019 RA regulatory compliance needs from PG&E. In addition, SJCE obtained bids from Calpine, Merced Irrigation District ("MEID"), and a number of additional sellers. SJCE notified PG&E, Calpine, and MEID of its interest in contracting for RA.

**28.** With the assistance of NCPA, SJCE entered into negotiations with PG&E, Calpine, and MEID to finalize the quantities it would procure from each of these three entities. With bids accepted, negotiations well underway, and only the exact megawatts ("MW") of procurement to finalize, the newly created SJCE was well positioned to meet all its 2019 RA needs.

**29.** Without any explanation, PG&E indicated to SJCE during these negotiations that it was withdrawing its bids for System, Greater Bay Area ("GBA"), and PG&E Other RA for the months of July, September and October 2019. PG&E formally communicated this withdrawal in writing on August 16, 2016.[20]

**30.** Immediately after PG&E communicated its withdrawal, NCPA and SJCE set out to find alternative sellers to meet SJCE's RA obligations. At my direction and on SJCE's behalf,

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[17] I am informed and believe copies of those solicitations were previously produced to the Consumer Protection and Enforcement Division ("CPED") on April 24, 2019.

[18] I am informed and believe that a list of those recipients was previously produced to CPED on April 24, 2019.

[19] I am informed and believe that screenshots of the websites were previously produced to CPED on April 24, 2019.

[20] I am informed and believe that a copy of this communication was previously produced to CPED on April 24, 2019.

NCPA issued additional solicitations.[21] In addition, SJCE procured additional supplies through its participation in the solicitations of CleanPowerSF, PG&E, and PCE.[22]

**31.** SJCE also concluded agreements with Calpine and MEID, while procuring from PG&E amounts it continued to offer for the remainder of the year. Purchasing these amounts from PG&E was done under unfavorable contract terms, as described below. As of October 31, 2018, SJCE had procured 46 percent of its annual System RA needs from PG&E, 40 percent from other sellers; and 14 percent was outstanding.

**32.** With the assistance from NCPA, SJCE also accepted most of the bids it had received in its first and subsequent solicitations that were still available and met SJCE's outstanding need.[23] Some bids that were initially submitted were no longer available once SJCE returned to bidders after PG&E withdrew its supply.

**33.** For SJCE's second bid solicitation issued on September 7, only one entity responded. That one bid from Silicon Valley Power was for the sale of Local RA only. SJCE accepted the bid, which resulted in a contract dated October 30, 2018.

**34.** For SJCE's third bid solicitation issued on October 11, only three entities responded. The bids from CleanPowerSF and Peninsula Clean Energy ("PCE") only offered System and Flexible RA for the months of January, February, April, and May.[24] However, the third bid from CalPine was for the sale of Local RA only. Previously, CleanPowerSF had offered to sell System RA for July, September, and October, but July was no longer offered in October, and the amounts for September and October were reduced. As a result, in the contract entered into with CleanPowerSF, dated October 26, 2018, CleanPowerSF did not provide July, and had to reduce the amount of System RA it could sell for September and October.

**35.** For SJCE's fourth bid solicitation issued on October 23, only three entities responded. The bids from CalPine, Alameda Municipal Power, and PCE only offered to sell Local RA.[25]

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[21] I am informed and believe copies of those solicitations were previously produced to CPED on April 24, 2019.

[22] I am informed and believe copies of those solicitations were previously produced to CPED on April 24, 2019.

[23] I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

[24] I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

[25] I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

The offers from CalPine and PCE were conditioned on a swap of System RA from SJCE in return for Local RA.

**36.** In 2018, the ROC used provisions in the draft ERMR and its authority to enable SJCE to enter into transactions with counterparties that did not meet the standard ERMR credit requirements.

**37.** Specifically, on August 8, 2018, the ROC authorized SJCE to enter into transactions for 2019 RA with the following (even though these entities may not have been approved counterparties at the time):

a. MEID: In an amount not to exceed: $4,400,000 (System 24 MW-mo at $2/kw-mo; PG&E Local 1029.20 MW-mo at $4.12/kw-mo;)

b. PG&E: In an amount not to exceed $25,500,000 (System 3342 MW-mo @ $4.24 kw-mo; GBA Local 860 MW-mo @ $ 4.11 kw-mo; PG&E local 1840 MW @ $4.11 kw-mo)

c. Calpine: In an amount not to exceed $6,000,000 (System 250 MW-mo @ $2.75 kw-mo; GBA Local 1250 MW-mo @ $4 kw-mo)

**38.** Additionally, on October 26, 2018, the ROC authorized SJCE to enter into transactions for 2019 RA without credit support with the following (even though these may not have been approved counterparties at the time): MEID ($4,220,000), CleanPowerSF ($2,550,000), PG&E ($723,000), Calpine ($1,400,000), PCE ($1,200,000), Alameda Municipal Power ($220,000), AltaGas $300,000), ConocoPhillips ($50,000).

**39.** On October 16, 2018, the ROC authorized SJCE staff to enter into transactions for additional 2019 RA without credit support as follows (even though the counterparties may not have been approved counterparties): High Desert ($618,0753), Phases Renewables ($18,000), PCE ($81,600), Clean Power Alliance ($120,900).

**40.** In utilizing its waiver discretion, the ROC worked to support SJCE's procurement efforts by relaxing strict credit standards.

**41.** Before October 31, 2018, at my direction and on behalf of SJCE, NCPA also responded to three separate 2019 RA solicitations by CleanPowerSF on September 14, 2018; by PG&E on September 26, 2018; and by PCE on October 26, 2018.[26]

[26] I am informed and believe copies of those solicitations and responses were previously produced to CPED on April 24, 2019.

**42.** PG&E's withdrawal left San José with large single month gaps to fill during the hardest-to-fill summer months. Filling high interest single months is made more difficult in that certain RA providers prefer now and preferred in 2018-2019, to sell annual strips of RA. In other words, they preferred to sell a constant volume of RA per month over the course of a year.

**43.** SJCE rejected a small number of bids because the cost would have been substantially above other bids for similar products and well above the Commission's cap of $40 MW-year. Some sellers would only sell annual strips to SJCE. In these cases, the average cost per MW-month to SJCE would have been unreasonably high because the offer was contingent on accepting amounts in months for which SJCE had already procured all its RA needs. No sellers had the large amount of RA capacity SJCE needed for sale in only the three most difficult-to-fill months of the year.

**44.** SJCE could, and did, buy some annual strips and sought to sell excess RA in the months in which it did not require RA. However, the months when SJCE did not need RA were the less coveted months. Thus, SJCE had to limit such procurement to avoid creating a significant risk of being unable to sell all the excess, or to have to sell at a significantly discounted price increasing costs for its customers. Purchasing a large volume of unneeded RA would have financially harmed customers, would have been imprudent, and in extreme cases could have been considered a violation of the prohibition against speculative buying.

**45.** SJCE faced an additional challenge in meeting its RA obligations because the allocated RA requirements changed. After its July solicitation, SJCE procured the amounts it had forecast it would need except in the months of July, September, and October. Then the Commission issued three different RA allocations inside of six weeks. Specifically, on August 10, 2018, the Commission's Energy Division issued its initial allocation. SJCE's September 7, 2018, solicitation reflected the revised allocation. However, the allocation was revised on September 20, 2018, and again on September 27, 2018.

**46.** In order to meet its RA requirements, SJCE accepted difficult contract terms that are not consistent with the City of San José's contracting practices. For example, SJCE accepted PG&E's insistence on use of New York law for RA transactions even though the City of San José does not typically accept contract clauses for law other than California law. Moreover, SJCE did not think use of New York law was reasonable in this context as the transaction is taking place in California; the RA program is a California program; both San José and PG&E

reside in California; and the Commission's required terms for Renewables Portfolio Standard transactions require use of California law. In addition, SJCE accepted PG&E terms conditioning collateral requirements on PG&E remaining the supplier of last resort and providing transmission and distribution services to and operate as the billing agent for SJCE customers. Finally, even though PG&E's financial condition was known to be precarious,[27] SJCE had to accept collateral terms that precluded SJCE from ever making a collateral call on PG&E, but allowed PG&E to make collaterals calls on SJCE.

**47.** During the months of August and September, I met with Commission Energy Division staff to discuss the Local RA obligations assigned to SJCE for January and February of 2019 based on SJCE's projected load in August of 2019. I explained that this would result in a need by SJCE to procure Local RA in an amount more than nineteen times its entire January 2019 load and twenty times its entire February 2019 load. I explained that this allocation was contrary to the anti-cost-shift obligation under statute and the intent of Resolution E-4907. At the end of September, the Energy Division informed SJCE that it had not identified a basis for SJCE not to procure these amounts.

**48.** SJCE procured Local RA in an amount more than nineteen times its entire January 2019 load. The City of San José also commenced Phase 2 of SJCE's customer phase-in plan in February 2019, rather than in March as previously planned, in order to minimize the cost shift from having to procure Local RA in amounts disproportionate to its load.

**49.** The three days before the October 31 year-ahead filing deadline were particularly chaotic as Load Serving Entities ("LSEs") and CCAs tried to cure their respective RA deficiencies. In those three days, SJCE staff witnessed Investor Owned Utilities offering to sell RA, only to see those offers suddenly withdrawn within days, even hours.

## V. SJCE Continued to Make Procurement Efforts Following the October 31, 2018 Deadline.

**50.** After the YA deadline, SJCE continued its efforts to cure its RA deficiencies.

**51.** After the October 31, 2018, compliance filing deadline, at my direction and on behalf of SJCE, NCPA issued four further solicitations for 2019 RA on November 13, 2018, January 18, 2019, March 22, 2019, and July 19, 2019.

[27] On Jan. 29, 2019, PG&E filed for Chapter 11 bankruptcy, as noted here: https://www.cpuc.ca.gov/industries-and-topics/pge/pge-bankruptcy.

**52.** These solicitations were sent out to over forty (40) recipients (the number of recipients may have evolved somewhat over time as SJCE and NCPA became aware of additional potential sellers) and solicitations were included on SJCE's website.

**53.** After October 31, 2018, at my direction and on behalf of SJCE, NCPA also responded to fourteen (14) separate 2019 RA solicitations (1) by PG&E on November 5, 2018; (2) by CleanPowerSF on November 9, 2018; (3) by PG&E on November 14, 2018; (4) by Clean Power Alliance ("CPA") on November 27, 2018; (5) by AltaGas on November 29, 2018; (6) by SCE on January 9, 2019; (7) by CPA on February 8, 2019; (8) by SCE on March 7, 2019; (9) by CalPine on April 10, 2019; (10) by City of Lancaster on May 7, 2019; (11) by PG&E on May 17, 2019; (12) by City of Roseville on June 24, 2019; (13) by PG&E on July 5, 2019; and (14) by PG&E on July 26, 2019.[28]

**54.** On November 9, 2018, December 4, 2018, December 19, 2018, January 4, 2019, February 27, 2019, and March 8, 2019, the ROC accepted credit ratings and transaction limits for counterparties selling needed products including RA, in order to facilitate SJCE's ability to continue to cure the 2019 YA RA deficiencies and comply with 2019 month-ahead RA requirements. Some of these adjustments were made irrespective of the financial quality of counterparties to maximize SJCE's opportunity to comply with RA and RPS requirements.

**55.** On March 20, 2019, the ROC authorized SJCE to buy and sell RA with only the following limitations:

a. SJCE will not purchase more than expected need.
b. SJCE will stay in projected RA cost:
    i. Currently projected: 2019: $43.5M; 2020: $26M; 2021: $26.5M; 2022: $26.5M
c. SJCE will strive to work with the most credit worthy counterparties.
d. SJCE will report purchases and sales to the ROC on a monthly basis.

**56.** After obtaining this procurement flexibility from the ROC, in addition to issuing formal solicitations, I directed NCPA and my staff to contact counterparties throughout the procurement process with the purpose of obtaining sufficient supply to meet SJCE's 2019 month-ahead RA compliance requirements.

[28] *See* the concurrently submitted Prepared Testimony of Anthony Zimmer (K.19-03-024) (March 25, 2025) at 7.

**57.** Due to these efforts, SJCE was able to procure additional 2019 RA, and cured a significant portion of the YA RA shortfall in advance of the Month-Ahead RA filing deadline. As shown in the table below, SJCE was 870.86 MW short in its 2019 RA YA filing. SJCE was only 465.98 MW short of its 2019 RA YA requirement by the Month-Ahead RA filing deadlines. Thus, SJCE cured 404.88 MWs of the YA shortfall, or 46%, in a tight RA market. By the Month-Ahead RA filing deadline, SJCE was required to procure 100% of its RA obligation in each month, whereas by the YA RA filing deadline, SJCE was only required to procure 90% of its RA obligation for the months of May through September. In the Month-Ahead timeframe, SJCE was short a total of 580.59 MWs in 2019.

| | YA Requirement* | YA Provided* | Shortfall* | MA Requirement | MA Provided | Shortfall from YA | Shortfall from MA | Increase from YA filing |
|---|---|---|---|---|---|---|---|---|
| July | 883 | 482.39 | 400.61 | 938 | 808.39 | 75 | 129.61 | 326 |
| September | 984 | 388.47 | 595.53 | 1044 | 593.02 | 390.98 | 450.98 | 204.55 |
| Total | 1,867 | 870.86 | 996.14 | 1982 | 1401.41 | | 580.59 | |

* Source, Table 1 of Citation and calculation.

**58.** The following table describes the timeline of events with respect to SJCE's procurement efforts for its 2019 YA Local, Flexible, and System RA obligations:

| Date | Action |
|---|---|
| August 29, 2017 | San José City Council approved SJCE's implementation plan. |
| January 30, 2018 | San José City Council approved revisions to the launch schedules to September 1, 2018 for municipal accounts, and March 1, 2019 for the remainder of San José's residents and businesses. |
| July 11, 2018 | SJCE issues a solicitation for 2019 RA. |
| August 9, 16, 2018 | PG&E notifies SJCE orally and then in writing that it is withdrawing quantities for July, September and August. |
| August 10, 2018 | The CPUC issued its initial RA allocation. |
| August-September 2018 | SJCE has conversations with Energy Division about Local RA requirements for January and February. |

| Date | Action |
|---|---|
| September 7, 2018 | SJCE issues 2nd solicitation for 2019 RA. |
| September 10, 2018 | The CPUC revised its initial RA allocation. |
| September 14, 2018 | SJCE submits bid in CleanPowerSF solicitation. |
| September 26, 2018 | SJCE submits bid in PG&E solicitation. |
| September 27, 2018 | The CPUC issued the final RA allocation. |
| October 11, 2018 | SJCE issues 3rd solicitation for 2019 RA. |
| October 23, 2018 | SJCE issues 4th solicitation for 2019 RA. |
| October 26, 2018 | SJCE submits bids in PCE solicitation. |
| October 31, 2018 | SJCE submits 2019 YA compliance filing and waiver request |
| November 2, 2019 | SJCE issues 5th solicitation for 2019 RA. |
| November 5, 2019 | SJCE submits bid in PG&E solicitation |
| November 9, 2018 | SJCE submits bid in CleanPowerSF 2019 RA solicitation |
| November 10, 2018 | SJCE issued a solicitation that included outstanding 2019 RA amounts. |
| November 14, 2018 | SJCE responds to PG&E 2019 RA solicitation |
| November 27, 2018 | SJCE responds to CPA 2019 RA solicitation |
| November 29, 2018 | SJCE responds to AltaGas 2019 RA solicitation |
| January 9, 2019 | SJCE responded to SCE 2019 RA solicitation |
| January 18, 2019 | SJCE issues 6th solicitation for 2019 RA. |
| February 8, 2019 | SJCE submits bid in CPA 2019 RA solicitation |
| February 15, 2019 | CPED issues $6.81 million citation to SJCE |
| February 27, 2019 | CPED revises its SJCE citation to $6.79 million |
| March 7, 2019 | SJCE submits bid in SCE 2019 RA solicitation |

| Date | Action |
|---|---|
| March 22, 2019 | SJCE issues 7th solicitation for 2019 RA. |
| April 10, 2019 | SJCE submits bid in CalPine 2019 RA solicitation |
| May 7, 2019 | SJCE submits bid in City of Lancaster 2019 RA solicitation |
| May 17, 2019 | SJCE submits bid in PG&E 2019 RA solicitation |
| June 24, 2019 | SJCE submits bid in City of Roseville 2019 RA solicitation |
| July 5, 2019 | SJCE submits bid in PG&E 2019 RA solicitation |
| July 19, 2019 | SJCE issues 8th solicitation for 2019 RA. |
| July 26, 2019 | SJCE submits bid in PG&E 2019 RA solicitation |

## VI. San José Clean Energy Utilized Aggressive Procurement Practices and Pricing in its Efforts to Procure its 2019 RA Requirements.

**59.** SJCE tried to make its procurement process and contracts simple and non-controversial to procure RA as quickly as possible. SJCE's proposed contract terms in all its solicitations followed industry standards, and SJCE attached its customized versions of the Edison Electric Institute ("EEI") Master Agreement coversheet and the confirmation for use with the Western Systems Power Pool ("WSPP") Agreement.[29] SJCE indicated to winning bidders its desire to use these or earlier versions of these forms, but where bidders sought to use their preferred forms, NCPA and SJCE worked with bidders to come to an agreement using their preferred forms.

**60.** SJCE paid $32,961,565 for 2019 RA. The penalty assessed for SJCE is $6,771,155, resulting in an overall cost for SJCE RA in 2019 of $39,752,720.

**61.** The increase in prices for 2019 RA meant that LSEs like SJCE that were only able to start buying RA for 2019 in late 2018 paid significantly more than LSEs that could begin procuring earlier. According to the CPUC's 2019 Resource Adequacy report, the weighted

[29] I understand and believe that copies of those customized versions of those agreements were previously produced to CPED on April 24, 2019.

average price LSEs paid for 2019 RA was $3.46.[30] In contrast, SJCE paid an overall weighted average price of $4.27 per kW/mo for 2019 RA. Had SJCE been able to buy all the RA it needed in 2019 at the weighted average price of $3.46 in the CPUC 2019 Resource Adequacy Report,[31] its total RA costs would have been $24,950,060, $14,802,660.40 less than the $39,752,720 it paid.

**62.** PG&E issued a solicitation to sell January 2019 RA on October 31, 2018, after the RA purchased by respondents could count towards the YA obligation. PG&E issued a second solicitation to sell February through December 2019 RA on November 8, 2018. SJCE is unaware of any reason why PG&E could not have made these volumes available before the annual RA compliance filing deadline.

## VII. San José Clean Energy Acted as a Responsible RA Market Participant

**63.** Its procurement of RA after the October 31, 2018 deadline allowed SJCE to cure its July and October 2019 Flex RA deficiencies. However, SJCE still had deficiencies in System RA for July and System and Flex RA for September. The table below compares the deficiency amounts from the citation and contrasts them against the deficiency amounts at the end of 2019.

| | July 2019 | September 2019 | October 2019 |
|---|---|---|---|
| System (1/23/19) | 400.61 | 559.53 | -- |
| System (12/31/19) | 129.61 | 450.98 | -- |
| Flex (1/23/19) | 12.10 | 99.10 | 41.10 |
| Flex (12/31/19) | -- | 108.10[32] | -- |

[30] *See* 2019 Resource Adequacy Report, p. 22, Table 6, available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2019rareport-1.pdf

[31] *See* https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/2019-final-calculation-of-the-pcia-market-price-benchmarks.pdf.

[32] The reason why SJCE's deficiency for Flex RA in the month of September 2019 appears to have increased because SJCE only had to acquire 90% of its Flex requirement by the YA filing on October 31, but it had to acquire 100% of it Flex requirement by the Month-Ahead filing. SJCE's resulting deficiency is not higher, however, because its structured Mid-Year Adjustment calculated by the CPUC in June 2019 resulted in a lower total Flex requirement for September 2019.

**64.** Even though SJCE did not receive a citation or penalty for its Local RA deficiencies, SJCE also continued its efforts to cure its Local RA deficiencies after the YA deadline. For the month of January 2019, SJCE purchased Local RA from PCE on November 14, 2018. For the month of February 2019, SJCE purchased Local RA from CleanPowerSF on November 27, 2018. For the month of May 2019, SJCE purchased Local RA from Pilot Power Group on March 18, 2019. For the month of July 2019, SJCE purchased Local RA from Pilot Power Group on April 19, 2019. For the month of September 2019, SJCE purchased Local RA from Silicon Valley Clean Energy on April 29, 2019. And for the month of October 2019, SJCE purchased Local RA from Silicon Valley Clean Energy on April 29, 2019, and East Bay Community Energy Authority on August 13, 2019.

**65.** Due to these efforts, SJCE was able to cure many, but not all, of its monthly Local RA deficiencies. For most of the months in which there were still Local RA deficiencies, SJCE was able to decrease the amounts by which it was deficient. The table below compares the deficiency amounts from October 31, 2018, and contrasts them against the deficiency amounts at the end of 2019.

| | Jan-19 | Feb-19 | May-19 | July-19 | Sept-19 | Oct-19 | Dec-19 |
|---|---|---|---|---|---|---|---|
| GBA (10/31/18) | -- | 76.9 | 11.9 | 4.7 | 29.9 | 15.9 | 4.9 |
| GBA (12/31/19) | -- | 62.95 | -- | -- | 1.95 | -- | -- |
| PG&E Other (10/31/18) | 4.4 | 162.0 | 10.1 | 132.1 | 158.1 | 153.9 | 5.3 |
| PG&E Other (12/31/19) | -- | 162.0 | 10.1 | 98.1 | 138.1 | 131.89 | -- |

**66.** Based on the above, I believe SJCE acted aggressively and in good faith to procure sufficient RA for its 2019 YA and Month-Ahead requirements., and reasonably and in good faith responded to solicitations of others.

## VIII. San José Clean Energy's Financial Resources Did Not Support the Assessment of the Penalty Amount.

**67.** San José Clean Energy is an enterprise program of the City of San José. As such, SJCE's expenditures are funded by its revenues. In 2018, SJCE received from the City of San José's Financing Authority a one-time amount of $10 million in start-up funding. Outside of the initial start-up funding, SJCE receives no support from the City's General Fund, although the City has, when necessary, made available to SJCE commercial paper loads that must be repaid.

**68.** As a City program, SJCE does receive organizational support. For example, the Director of SJCE reports directly to the City Manager, and SJCE has access to the advice and leadership of the City's senior management team. The City's Finance Department established SJCE's chart of accounts and developed its internal accounting processes and procedures during its start-up phase. The City's Environmental Services Department, which oversees several City utilities, assisted in the preparation of SJCE's start-up plan.

**69.** In addition to San José Clean Energy, the City of San José operates and manages three enterprises, including:

a. The Norman Y. Mineta San José International Airport, which served approximately 14.9 million passengers in FY 2018-19.

b. The San José -Santa Clara Regional Wastewater Facility, which serves 1.4 million residents and over 17,000 businesses in eight cities and four sanitation districts.

c. Additionally, the City has experience operating utilities. Its water utility, San José Municipal Water, has been operated by the City since 1961. It serves approximately 100,000 customers and is the fourth largest water retailer in the County of Santa Clara.

**70.** Each of these enterprises and utilities generates sufficient funding through rates and charges to maintain operations and sufficient reserves.

**71.** To ensure the financial viability of SJCE in its first year of operation, the City's Finance Department solicited for a Revolving Credit Agreement that provided both a Line of Credit and a Letter of Credit, and in November 2018, SJCE executed the Agreement with Barclays Bank PLC.[33] The Agreement was subsequently amended in May 2019 to increase the aggregate commitment from $50 million to $80 million, of which no more than $30 million was available as cash draws (advances) against a revolving Line of Credit.

**72.** Advances under the Line of Credit (up to $30 million) were only to be used to fund start-up and long-term costs for operational working capital, which would include the purchase of electrical power. The remainder of the commitment, $50 million, was provided in the form of Letters of Credit that are legal promises to pay when collateral calls are made against

[33] A copy of that Revolving Credit Agreement can be found at: https://records.sanjoseca.gov/Contracts/CON664282-000.pdf.

SJCE. The specifics on collateral requirements were unique to each power purchase agreement and the Letters of Credit provided the necessary flexibility to satisfy these requirements.

**73.** As a start-up enterprise in its second year of operation, SJCE's chance at viability was seriously threatened in having to divert $6.8 million of funding from operations toward payment of the citation. Under the Revolving Credit Agreement, SJCE was required to maintain an operating reserve of $20 million by December 31, 2019. Payment of the Penalty constrained SJCE and jeopardized its ability to meet that operating reserve requirement.

## IX. The Commission's Factors Do Not Support the Level of Penalty Imposed.

**74.** Even at the time the Penalty was first applied, SJCE's shortfall was no more than 22.3% of the YA System RA obligation notwithstanding the fact that the RA market was very constrained in 2019. By the Month-Ahead filing deadline, SJCE's shortfall for the month ahead requirements was only 8% of the full Month-Ahead requirement for the year or 10% of the Month-Ahead requirement for months May through September (the YA showing months). In contrast, the penalty amounted to 21% of the total 2019 RA expenditures for SJCE of $32,962,000. Even if one adds to the amounts SJCE spent for RA in 2019, $3,103,427 (the final uncured shortfall amount of 465.98 MW times the Penalty amount of $6.66 kw-mo), the Penalty is still 18% of the costs, for an ultimate shortfall of 8-10% (depending on the metric used).

**75.** SJCE never contested that it was in fact short, and paid the Penalty promptly. SJCE ratepayers absorbed the Penalty without SJCE having an opportunity to present evidence relating to the propriety of the Penalty for six years.

**76.** SJCE is a governmental entity with no excess resources or shareholders to absorb a penalty such as the Penalty applied by the Commission. Because SJCE is a governmental entity, the only sources of funds to pay the Penalty were customers through higher rates for electric service or San José taxpayers. In 2019, 21.5% of SJCE's residential customers participated in the CPUC California Alternate Rates for Energy program ("CARE") or the CPUC Family Electric Rate Assistance program ("FERA"), and 19.69% of all SJCE customer accounts were CARE/FERA.

**77.** In December of 2024, according to the U.S. Energy Information Administration, California electric rates were the 4th most expensive of all 50 states at an average of $25.16.[34]

**78.** In 2024, 31 percent of people in Silicon Valley lived below self sufficiency standards.[35] Statistics in 2019 were likely similar.

**79.** In 2022, 31 percent of people in San Mateo and Santa Clara were at risk of food insecurity.[36] Statistics in 2019 were likely similar.

**80.** At the time the Commission applied the Penalty, SJCE was a new CCA with no reserves because it had not had time to build up a reserve. The Commission's application of a large penalty at the commencement of SJCE's operation before SJCE had an opportunity to build a reserve was particularly challenging for the program to manage.

**81.** Because SJCE continued to cure its RA deficiencies in advance of the Month-Ahead filing deadline, and did in fact cure 46% of the shortfall, SJCE's ratepayers paid for RA twice for the amount that SJCE cured. For the deficiency that was cured, SJCE customers paid for the RA that SJCE bought in the market to cure its deficiency, and SJCE customers paid the Penalty because, as explained above, as a government entity, SJCE does not have shareholders to absorb a CPUC penalty.

**82.** Since the Commission declined to give SJCE credit for curing YA deficiencies prior to the Month-Ahead filing deadline in applying a penalty for a YA shortfall, SJCE stopped buying RA to cure YA deficiencies it received a CPUC penalty for, as this would continue to expose its customers to double paying for RA.

**83.** CPUC penalties for Year and Month Ahead shortfalls do nothing to add capacity to the California electric market as these penalties are paid to the general fund.

**84.** By the CPUC's own calculations, since 2019 when the CPUC implemented its rote application of RA penalties, RA prices have increased by almost a factor of ten, as demonstrated by the trajectory of the RA Market Price Benchmark used to establish PCIA.[37]

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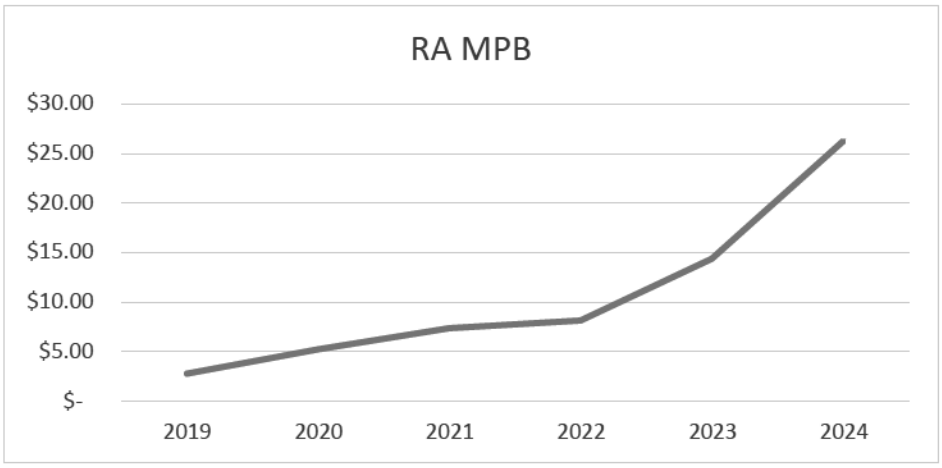
[34] *See* https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a.

[35] *See* https://siliconvalleyindicators.org/data/economy/income/income-adequacy/share-living-below-self-sufficiency-standards/.

[36] *See* https://siliconvalleyindicators.org/data/economy/income/income-adequacy/households-at-risk-of-food-insecurity/.

[37] Calculated from data available at: https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/power-charge-indifference-adjustment.




**85.** If the Commission refunds to SJCE all or some of the Penalty it applied for the YA shortfall in 2019, these funds would be credited to SJCE's budget and would be considered in establishing customer rates for 2026.

**86.** I understand that SJCE's Penalty of nearly $6.8 Million (assessed in SJCE's second year of operation) was the largest RA citation penalty that had ever been assessed under the program by a factor of nearly four times until 2023.[38]

**87.** Based on the above, I believe that the totality of circumstances renders the amount of the assessed Penalty against the public interest.

Dated: March 25, 2025, in San José, California

[38] A list of Citation penalties maintained by the Commission at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/2025/feb-2025-ueb-energy-citations.pdf.

EXHIBIT: SJCE #2
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Feb 2025 UEB Energy Citations
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# FEBRUARY 2025 UEB ENERGY CITATION

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# Energy Citations Issued

| Energy Citation # | Date Issued | Company | Citation Amount | Remarks |
|---|---|---|---|---|
| **California Environmental Quality Act (CEQA) Citations** | | | | |
| E-4550-0001 | 10/26/2016 | Southern California Gas Company | $ 275,000 | $275,000.00 citation paid Jun 29, 2017 |
| | | | | |
| **Core Transport Agent (CTA) Citations** | | | | |
| UEB-003-001 | 03/20/2019 | SFE Energy California, Inc. | $ 1,000 | $1,000.00 citation paid Apr 09, 2019 |
| UEB-003-002 | 03/20/2019 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Apr 22, 2019 |
| UEB-003-003 | 05/21/2019 | Greenwave Energy, LLC | $ 1,000 | $1,000.00 citation withdrawn Jun 25, 2019 |
| UEB-003-004 | 11/13/2019 | Spark Energy Gas, LLC | $ 2,000 | $2,000.00 citation paid Dec 17, 2019 |
| UEB-003-005 | 11/14/2019 | Just Energy Solutions, Inc. | $ 1,000 | $1,000.00 citation paid Dec 12, 2019 |
| UEB-003-006 | 12/02/2019 | SFE Energy California, Inc. | $ 1,000 | $1,000.00 citation paid Dec 20, 2019 |
| UEB-003-007 to 026 | 02/13/2020 | Smart One Energy, LLC | $ 20,000 | $20,000.00 citation paid Mar 16, 2020 |
| UEB-003-027 to 036 | 02/26/2020 | Spark Energy Gas, LLC | $ 10,000 | $10,000.00 citation paid Apr 20, 2020 |
| UEB-003-037 to 039 | 04/21/2020 | Smart One Energy, LLC | $ 3,000 | $3,000.00 citation paid May 19, 2020 |
| UEB-003-040 to 041 | 08/06/2020 | Ambit California, LLC | $ 2,000 | $2,000.00 citation paid Sep 04, 2020 |
| UEB-003-042 | 08/20/2020 | Smart One Energy, LLC | $ 1,000 | $1,000.00 citation paid Sep 18, 2020 |
| UEB-003-043 | 09/17/2020 | Smart One Energy, LLC | $ 1,000 | $1,000.00 citation paid Oct 16, 2020 |
| UEB-003-044 | 11/04/2020 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Nov 25, 2020 |
| UEB-003-045 | 11/13/2020 | AAA Natural Gas | $ 1,000 | $1,000.00 citation paid Dec 01, 2020 |
| UEB-003-046 | 04/02/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid May 24, 2021 |
| UEB-003-047 to 049 | 04/07/2021 | Bolt Energy Services, LLC | $ 3,000 | $3,000.00 citation paid May 24, 2021 |
| UEB-003-050 | 04/07/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid May 24, 2021 |
| UEB-003-051 | 05/14/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid May 24, 2021 |
| UEB-003-052 | 06/29/2021 | AAA Natural Gas | $ 1,000 | $1,000.00 citation paid Jul 07, 2021 |
| UEB-003-053 | 07/09/2021 | AAA Natural Gas | $ 1,000 | $1,000.00 citation paid Jul 29, 2021 |
| UEB-003-054 | 08/05/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid Aug 16, 2021 |
| UEB-003-055 | 08/18/2021 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Aug 31, 2021 |
| UEB-003-056 | 09/09/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid Oct 08, 2021 |
| UEB-003-057 | 11/10/2021 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid Nov 30, 2021 |
| UEB-003-058 | 04/28/2022 | Greenwave Energy, LLC | $ 1,000 | $1,000.00 citation paid Jun 15, 2022 |
| UEB-003-059 to 060 | 06/02/2022 | Bolt Energy Services, LLC | $ 2,000 | $2,000.00 citation paid Jun 10, 2022 |
| UEB-003-061 to 180 | 06/24/2022 | Ambit California, LLC | $ 120,000 | $120,000.00 citation paid Jul 25, 2022 |
| UEB-003-181 | 11/23/2022 | Bolt Energy Services, LLC | $ 1,000 | $1,000.00 citation paid Dec 07, 2022 |
| UEB-003-182 | 11/23/2022 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Jan 23, 2023 |
| UEB-003-183 | 01/26/2023 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Feb 27, 2023 |
| UEB-003-184 to 186 | 04/07/2023 | Spark Energy Gas, LLC | $ 3,000 | $3,000.00 citation paid May 16, 2023 |
| UEB-003-187 | 05/24/2023 | SFE Energy California Inc | $ 1,000 | $1,000.00 citation paid Jun 23, 2023 |
| UEB-003-188 | 08/23/2023 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Sep 21, 2023 |
| UEB-003-189 | 02/15/2024 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Mar 04, 2024 |
| UEB-003-190 | 04/18/2024 | Vista Energy Marketing L.P. | $ 1,000 | $1,000.00 citation paid May 17, 2024 |
| UEB-003-191 | 05/08/2024 | Vista Energy Marketing L.P. | $ 1,000 | $1,000.00 citation paid Jun 10, 2024 |
| UEB-003-192 | 05/16/2024 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Jun 18, 2024 |
| UEB-003-193 to 194 | 05/17/2024 | AAA Natural Gas | $ 2,000 | $2,000.00 citation paid Jun 25, 2024 |
| UEB-003-0195 | 09/26/2024 | StateWise Energy California, LLC | $ 1,000 | $1,000.00 citation paid Oct 15, 2024 |
| UEB-003-0196 | 07/01/2024 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Jul 12, 2024 |
| UEB-003-0197 | 07/05/2024 | AAA Natural Gas | $ 1,000 | $1,000.00 citation appealed in K.24-08-005 on Aug 02, 2024 |
| UEB-003-0198 | 08/06/2024 | Spark Energy Gas, LLC | $ 1,000 | $1,000.00 citation paid Sep 16, 2024 |
| UEB-003-0199 | 08/02/2024 | Smart One Energy, LLC | $ 1,000 | $1,000.00 citation paid Aug 27, 2024 |
| UEB-003-200 to 202 | 08/06/2024 | SFE Energy Inc. | $ 3,000 | $3,000.00 citation paid Aug 23, 2024 |
| UEB-003-203 to 573 | 12/17/2024 | AAA Natural Gas | $ 371,000 | $371,000.00 citation paid Jan 16, 2025 |
| UEB-003-0574 | 11/07/2024 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Nov 19, 2024 |
| UEB-003-0575 | 01/27/2025 | Big Tree Energy CA, LLC | $ 1,000 | $1,000.00 citation payment or appeal due Feb 26, 2025 |
| UEB-003-0577 | 11/18/2024 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Dec 02, 2024 |
| UEB-003-0578 to 0598 | 01/06/2025 | Wave Energy, LLC | $ 21,000 | $21,000.00 citation paid Jan 21, 2025 |
| UEB-003-0599 | 02/06/2025 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Feb 19, 2025 |
| UEB-003-0600 to 0604 | 02/10/2025 | Spark Energy Gas, LLC | $ 5,000 | $5,000.00 citation payment or appeal due Mar 12, 2025 |
| UEB-003-0605 | 02/11/2025 | Wave Energy, LLC | $ 1,000 | $1,000.00 citation paid Feb 19, 2025 |
| | | | | |
| **Disconnection Citations** | | | | |
| UEB-006-001 | 05/22/2023 | Southern California Edison | $ 1,000 | $1,000.00 citation paid Jun 22, 2023 |
| UEB-006-002-059 | 08/31/2023 | Southern California Edison | $ 58,000 | $58,000.00 citation paid Oct 02, 2023 |
| UEB-006-060-256 | 03/11/2024 | Southern California Edison | $ 197,000 | $197,000.00 citation paid Mar 18, 2024 |
| UEB-006-257-437 | 03/12/2024 | San Diego Gas & Electric | $ 181,000 | $181,000.00 citation paid Mar 26, 2024 |
| UEB-006-438-651 | 04/12/2024 | Southern California Edison | $ 214,000 | $214,000.00 citation paid May 02, 2024 |
| UEB-006-652-653 | 09/26/2024 | San Diego Gas & Electric | $ 2,000 | $2,000.00 citation paid Oct 18, 2024 |
| UEB-006-654 | 02/25/2025 | San Diego Gas & Electric | $ 1,000 | $1,000.00 citation payment or appeal due Mar 27, 2025 |
| | | | | |
| **Renewable Portfolio Standards (RPS) Citations** | | | | |
| E-4257-0001 | 11/18/2010 | Pilot Power Group, Inc. | $ 7,000 | $7,000.00 citation paid Jan 18, 2011 |
| | | | | |

# Energy Citations Issued

| Energy Citation # | Date Issued | Company | Citation Amount | Remarks |
|---|---|---|---|---|
| **Resource Adequacy (RA) Citations** | | | | |
| E-4195-0001 | 10/13/2009 | Constellation New Energy | $ 1,500 | $1,500.00 citation paid Nov 12, 2009 |
| E-4195-0002 | 01/15/2010 | San Diego Gas & Electric | $ 1,500 | $1,500.00 citation paid Feb 12, 2010 |
| E-4195-0003 | 02/16/2010 | Pilot Power Group, Inc. | $ 6,000 | $6,000.00 citation paid Mar 01, 2010 |
| E-4195-0004 | 03/08/2010 | Commerce Energy, Inc. | $ 13,000 | $4,500.00 citation paid Jul 07, 2010 |
| E-4195-0005 | 03/08/2010 | Commerce Energy, Inc. | $ 18,000 | $18,000.00 citation paid Jul 07, 2010 |
| E-4195-0006 | 03/08/2010 | Commerce Energy, Inc. | $ 2,500 | $2,500.00 citation paid Jul 07, 2010 |
| E-4195-0007 | 03/30/2010 | Pilot Power Group, Inc. | $ 14,500 | $14,500.00 citation paid Apr 28, 2010 |
| E-4195-0008 | 04/06/2010 | Direct Energy Business, LLC | $ 1,500 | $1,500.00 citation paid Apr 27, 2010 |
| E-4195-0009 | 10/04/2010 | Commerce Energy, Inc. | $ 2,000 | $2,000.00 citation paid Dec 01, 2010 |
| E-4195-0010 | | NOT USED | | |
| E-4195-0011 | 02/17/2011 | Liberty Power Holdings | $ 4,000 | $4,000.00 citation paid Mar 17, 2011 |
| E-4195-0012 | 07/25/2011 | Tiger Natural Gas | $ 3,000 | $3,000.00 citation paid Oct 25, 2011 |
| E-4195-0012* | 01/31/2012 | Glacial Power | $ 6,660 | $6,660.00 citation paid Mar 15, 2012 |
| E-4195-0013 | 04/17/2012 | Shell Energy North America (SENA) | $ 1,500 | $1,500.00 citation paid Jun 14, 2012 |
| E-4195-0014 | 12/18/2012 | San Diego Gas & Electric | $ 1,500 | $1,500.00 citation paid Jan 31, 2013 |
| E-4195-0015 | 12/18/2012 | Direct Energy Business, LLC | $ 5,000 | $5,000.00 citation paid Jan 14, 2013 |
| E-4195-0016 | 12/20/2012 | San Diego Gas & Electric | $ 5,000 | $5,000.00 citation paid Feb 25, 2013 |
| E-4195-0017 | | NOT USED | | |
| E-4195-0018 | | NOT USED | | |
| E-4195-0019 | 04/18/2013 | Commerce Energy, Inc. | $ 4,000 | $4,000.00 citation paid May 20, 2013 |
| E-4195-0020 | 05/22/2013 | Liberty Power Holdings | $ 5,000 | $5,000.00 citation paid Jul 01, 2013 |
| E-4195-0021 | 07/16/2013 | 3 Phases Renewables, LLC | $ 7,500 | $7,500.00 citation paid Feb 10, 2014 |
| E-4195-0021-A | 09/10/2013 | Liberty Power Holdings | $ 5,000 | $5,000.00 citation paid Nov 12, 2013 |
| E-4195-0022 | 04/15/2014 | 3 Phases Renewables, LLC | $ 5,000 | $5,000.00 citation paid May 02, 2014 |
| E-4195-0023 | 04/02/2015 | Commerce Energy, Inc. | $ 5,000 | $5,000.00 citation paid Jun 12, 2015 |
| E-4195-0024 | 06/03/2015 | EDF Industrial Power Services, LLC | $ 1,000 | $1,000.00 citation paid Jun 23, 2015 |
| E-4195-0025 | 06/03/2015 | Glacial Energy of California | $ 5,000 | $5,000.00 citation paid Jun 11, 2015 |
| E-4195-0026 | 06/25/2015 | 3 Phases Renewables | $ 10,000 | $10,000.00 citation paid Jul 27, 2015 |
| E-4195-0027 | 12/03/2015 | 3 Phases Renewables | $ 10,000 | $10,000.00 citation paid Jan 07, 2016 |
| E-4195-0030 | 06/04/2015 | Commerce Energy, Inc. | $ 10,000 | $10,000.00 citation paid Jul 01, 2015 |
| E-4195-0031 | 03/07/2016 | Tiger Natural Gas | $ 3,000 | $3,000.00 citation paid Apr 14, 2016 |
| E-4195-0032 | 03/30/2016 | Glacial Energy Of California | $ 5,000 | $5,000.00 citation paid Jun 12, 2019 |
| E-4195-0033 | 09/20/2016 | Shell Energy North America (SENA) | $ 5,500 | $5,500.00 citation paid Oct 04, 2016 |
| E-4195-0034 | 02/03/2017 | Commercial Energy of CA | $ 4,500 | $4,500.00 citation paid Mar 01, 2017 |
| E-4195-0035 | 09/01/2017 | CleanPowerSF | $ 10,000 | $10,000.00 citation paid Sep 22, 2017 |
| E-4195-0036 | 09/12/2017 | Southern California Edison Company | $ 10,000 | $10,000.00 citation paid Oct 30, 2017 |
| E-4195-0037 | 12/13/2017 | Direct Energy Business, LLC | $ 113,153 | $113,153.40 citation paid Dec 27, 2017 |
| E-4195-0038 | 12/19/2017 | Tiger Natural Gas | $ 2,000 | $2,000.00 citation paid Dec 26, 2017 |
| E-4195-0039 | 12/20/2017 | Commercial Energy of Montana | $ 10,456 | $10,456.20 citation paid Jan 16, 2018 |
| E-4195-0040 | 04/24/2018 | Just Energy Solutions, Inc. | $ 33,300 | $33,300.00 citation paid May 22, 2018 |
| E-4195-0041 | 04/24/2018 | American PowerNet Management | $ 10,000 | $10,000.00 citation paid Jun 19, 2018 |
| E-4195-0042 | 04/24/2018 | Pilot Power Group, Inc. | $ 100,709 | $100,709.20 citation paid Dec 20, 2018 |
| E-4195-0043 | 04/27/2018 | Direct Energy Business, LLC | $ 5,000 | $5,000.00 citation paid May 07, 2018 |
| E-4195-0044 | 05/15/2018 | Just Energy Solutions, Inc. | $ 10,000 | $10,000.00 citation paid Jun 05, 2018 |
| E-4195-0045 | 06/25/2018 | Just Energy Solutions, Inc. | $ 5,328 | $5,328.00 citation paid Jul 24, 2018 |
| E-4195-0046 | 06/25/2018 | Pioneer Community Energy | $ 1,305,360 | $1,305,360.00 citation paid Jul 24, 2018 |
| E-4195-0047 | 08/14/2018 | Just Energy Solutions, Inc. | $ 4,862 | $4,861.80 citation paid Sep 04, 2018 |
| E-4195-0048 | 08/15/2018 | Pioneer Community Energy | $ 1,118,880 | $1,118,880.00 citation paid Aug 21, 2018 |
| E-4195-0048A | 01/15/2019 | Just Energy Solutions, Inc. | $ 3,330 | $3,330.00 citation paid Feb 07, 2019 |
| E-4195-0049 | 02/13/2019 | Pioneer Community Energy | $ 137,462 | $137,462.40 citation paid Mar 08, 2019 |
| E-4195-0050 | 02/25/2019 | Valley Clean Energy | $ 3,330 | $3,330.00 citation paid Mar 08, 2019 |
| E-4195-0051 | 02/27/2019 | East Bay Community Energy | $ 1,552,589 | $1,552,589.20 citation paid Mar 22, 2019 |
| E-4195-0052 | 02/27/2019 | San Jose Clean Energy | $ 6,791,155 | Appealed on 04/17/19 in K.19-03-024 and ALJ-382 denied appeal on 9/18/20. $6,791,155.40 payment received on 10/6/20 |
| E-4195-0053 | 02/25/2019 | Agera Energy | $ 51,482 | $51,481.80 citation paid Mar 21, 2019 |
| E-4195-0054 | 02/15/2019 | Just Energy Solutions, Inc. | $ 362,304 | $362,304.00 citation paid Mar 20, 2019 |
| E-4195-0055 | 03/05/2019 | Commercial Energy | $ 299,520 | $299,520.20 citation paid Apr 02, 2019 |
| E-4195-0056 | 05/15/2019 | Just Energy Solutions, Inc. | $ 11,988 | $11,988.00 citation paid Jun 28, 2019 |
| E-4195-0057 | 05/16/2019 | Valley Clean Energy | $ 3,330 | $3,330.00 citation paid Jun 28, 2019 |
| E-4195-0058 | 05/15/2019 | Just Energy Solutions, Inc. | $ 5,000 | $5,000.00 citation paid Jun 28, 2019 |
| E-4195-0059 | 05/29/2019 | Commercial Energy | $ 26,573 | $26,573.40 citation paid Jul 10, 2019 |
| E-4195-0060 | 05/15/2019 | Just Energy Solutions, Inc. | $ 22,444 | $22,444.20 citation paid Jun 28, 2019 |
| E-4195-0061 | 07/31/2019 | Commercial Energy | $ 70,972 | $70,972.30 citation paid Sep 06, 2019 |
| E-4195-0062 | 07/24/2019 | Just Energy Solutions, Inc. | $ 46,587 | $46,586.70 citation paid Aug 13, 2019 |
| E-4195-0063 | 07/26/2019 | Commercial Energy | $ 6,660 | $6,660.00 citation paid Aug 29, 2019 |
| E-4195-0064 | 07/24/2019 | Just Energy Solutions, Inc. | $ 39,927 | $39,926.70 citation paid Aug 13, 2019 |
| E-4195-0065 | 07/24/2019 | Agera Energy | $ 2,500 | $2,500.00 citation paid Aug 23, 2019 |
| E-4195-0066 | 10/03/2019 | Just Energy Solutions, Inc. | $ 33,300 | $33,300.00 citation paid Oct 29, 2019 |
| E-4195-0067 | 10/01/2019 | Agera Energy | $ 4,500 | $4,500.00 citation paid May 08, 2023 |
| E-4195-0068 | 10/01/2019 | Commercial Energy | $ 3,300 | $3,300.00 citation paid Oct 28, 2019 |
| E-4195-0069 | 10/03/2019 | Just Energy Solutions, Inc. | $ 19,980 | $19,980.00 citation paid Oct 29, 2019 |
| E-4195-0070 | 10/29/2019 | Commercial Energy | $ 17,449 | $17,449.20 citation paid Nov 26, 2019 |
| E-4195-0071 | 12/10/2019 | Commercial Energy of Montana, Inc | $ 31,369 | $31,368.60 citation paid Dec 24, 2019 |

# Energy Citations Issued

| Energy Citation # | Date Issued | Company | Citation Amount | Remarks |
|---|---|---|---|---|
| E-4195-0072 | 12/10/2019 | Just Energy Solutions, Inc. | $ 5,994 | $5,994.00 citation paid Dec 24, 2019 |
| E-4195-0073 | 03/06/2020 | American PowerNet Management, LP | $ 30,441 | Appealed on 04/06/20 in K.20-04-004 and ALJ-384 approved on 08/06/20. Revised citation for $30,441 paid on 05/28/20 |
| E-4195-0074 | 03/10/2020 | San Jose Clean Energy | $ 1,116,149 | Appealed on 4/9/2020 in K.20-04-005. Revised citation for $1,116,149 paid on May 28, 2020 |
| E-4195-0075 | 03/10/2020 | Commercial Energy | $ 350,597 | $350,597.40 citation paid Apr 01, 2020 |
| E-4195-0076 | 03/10/2020 | Peninsula Clean Energy | $ 10,000 | $10,000.00 citation paid Apr 07, 2020 |
| E-4195-0077 | 03/10/2020 | East Bay Community Energy | $ 614,618 | Appealed on 04/09/20 in K.20-04-006. EBCE motioned to withdraw appeal on 09/16/20. Payment for $614,618 received on 10/02/2020. |
| E-4195-0078 | 03/11/2020 | Commercial Energy | $ 3,330 | $3,330.00 citation paid Apr 01, 2020 |
| E-4195-0079 | 03/10/2020 | Just Energy Solutions, Inc. | $ 5,261 | $5,261.40 citation paid Apr 22, 2020 |
| E-4195-0080 | 04/14/2020 | Tiger Natural Gas | $ 1,500 | $1,500.00 citation paid May 18, 2020 |
| E-4195-0081 | 04/20/2020 | Just Energy Solutions, Inc. | $ 35,864 | $35,864.10 citation paid Jun 19, 2020 |
| E-4195-0082 | 04/15/2020 | Clean Power Alliance of Southern California | $ 10,000 | Appealed $10,000.00 citation on May 14, 2020 in K.20-05-006. Resolution ALJ-394 dismissed this citation on 2/11/2021. |
| E-4195-0083 | 04/20/2020 | Commercial Energy | $ 7,495 | $7,495.00 citation paid May 21, 2020 |
| E-4195-0084 | 04/21/2020 | Commercial Energy | $ 7,495 | $7,495.00 citation paid May 22, 2020 |
| E-4195-0085 | 07/03/2020 | Commercial Energy | $ 3,330 | $3,330.00 citation paid Jul 30, 2020 |
| E-4195-0086 | 07/03/2020 | Commercial Energy | $ 3,996 | $3,996.00 citation paid Aug 03, 2020 |
| E-4195-0087 | 07/03/2020 | Commercial Energy | $ 4,990 | $4,990.00 citation paid Aug 03, 2020 |
| E-4195-0088 | 08/27/2020 | Just Energy Solutions, Inc. | $ 132,388 | $132,387.50 citation paid Oct 05, 2020 |
| E-4195-0089 | 08/28/2020 | Commercial Energy | $ 6,660 | $6,660.00 citation paid Sep 25, 2020 |
| E-4195-0090 | 08/28/2020 | Commercial Energy | $ 6,660 | $6,660.00 citation paid Sep 28, 2020 |
| E-4195-0091 | 08/28/2020 | Commercial Energy | $ 19,998 | $19,998.00 citation paid Sep 28, 2020 |
| E-4195-0092 | 08/28/2020 | Monterey Bay Community Energy | $ 336,663 | $336,663.00 citation paid Sep 18, 2020 |
| E-4195-0093 | 02/02/2021 | Commercial Energy | $ 5,610 | $5,609.70 citation paid Mar 01, 2021 |
| E-4195-0094 | 02/02/2021 | Commercial Energy | $ 4,795 | $4,795.20 citation paid Mar 01, 2021 |
| E-4195-0095 | 02/05/2021 | East Bay Community Energy | $ 1,486,034 | $1,486,033.60 citation paid Feb 23, 2021 |
| E-4195-0096 | 02/04/2021 | Monterey Bay Community Energy | $ 1,101,031 | $1,101,031.20 citation paid Feb 22, 2021 |
| E-4195-0097 | 02/04/2021 | Pilot Power Group, Inc. | $ 41,292 | $41,292.00 citation paid Mar 03, 2021 |
| E-4195-0098 | 02/03/2021 | San Diego Community Power | $ 388,288 | Appealed on 03/05/21 in K. 21-03-005 and ALJ-442 denied appeal on 07/13/23. $388,288 payment received on 07/21/23 |
| E-4195-0099 | 02/09/2021 | Western Community Energy | $ 1,529,866 | Appealed $1,529.866.40 citation on 03/11/21, in K.21-03-006. Western Community Energy filed a request for stay on 06/28/21, due to bankruptcy. Payments of $639,243.95 from WCE's bankruptcy trustee received on 10/21/22 and $3,471.79 on 05/16/23. $887,150.66 remains unpaid due to bankruptcy. |
| E-4195-0100 | 07/01/2021 | Commercial Energy | $ 1,121,788 | $1,121,787.50 citation paid Nov 10, 2022 |
| E-4195-0101 | 06/28/2021 | East Bay Community Energy | $ 5,000 | $5,000.00 citation paid Jul 26, 2021 |
| E-4195-0102 | 10/26/2021 | East Bay Community Energy | $ 652,530 | $652,529.60 citation paid Nov 08, 2021 |
| E-4195-0103 | 10/04/2021 | Central Coast Community Energy | $ 1,121,899 | $1,121,899.20 citation paid Oct 15, 2021 |
| E-4195-0104 | 10/05/2021 | East Bay Community Energy | $ 1,171,094 | $1,171,094.40 citation paid Nov 01, 2021 |
| E-4195-0105 | 10/14/2021 | EDF Industrial Power Services, LLC | $ 92,974 | $92,973.60 citation paid Oct 28, 2021 |
| E-4195-0106 | 10/05/2021 | Central Coast Community Energy | $ 1,612,963 | $1,612,963.20 citation paid Oct 15, 2021 |
| E-4195-0107 | 10/04/2021 | San Diego Community Power | $ 581,818 | Appealed on Nov 3, 2021 in K. 21-11-001 and ALJ-432 denied appeal on March 16, 2023. $581,817.60 payment received on April 17, 2023 |
| E-4195-0108 | 10/13/2021 | San Jose Clean Energy | $ 758,263 | $758,263.20 citation paid Nov 05, 2021 |
| E-4195-0109 | 10/08/2021 | Pilot Power Group, Inc. | $ 181,063 | $181,063.20 citation paid Nov 01, 2021 |
| E-4195-0110 | 10/08/2021 | Pilot Power Group, Inc. | $ 325,274 | $325,274.40 citation paid Nov 01, 2021 |
| E-4195-0111 | 10/05/2021 | Silicon Valley Clean Energy Authority | $ 571,250 | $571,250.40 citation paid Nov 09, 2021 |
| E-4195-0112 | 11/03/2021 | Pilot Power Group, Inc. | $ 105,528 | $105,527.50 citation paid Nov 23, 2021 |
| E-4195-0113 | 10/21/2021 | Shell Energy North America (SENA) | $ 567,133 | $567,132.50 citation appealed in K.21-11-018 on Nov 22, 2021 |
| E-4195-0114 | 04/08/2022 | Central Coast Community Energy | $ 2,075,878 | $2,075,877.60 citation paid Apr 19, 2022 |
| E-4195-0115 | 04/08/2022 | San Diego Community Power | $ 62,979 | $62,979.20 citation paid May 12, 2022 |
| E-4195-0116 | 04/20/2022 | Orange County Power Authority | $ 1,962,845 | Appealed on May 20, 2022 in K.22-05-017. OCPA motioned to withdraw appeal on Dec 12, 2023. Payment for $1,962,845 received on 4/16/2024. |
| E-4195-0117 | 04/12/2022 | CleanPowerSF | $ 1,292,361 | $1,292,360.80 citation paid May 18, 2022 |
| E-4195-0118 | 05/17/2022 | CleanPowerSF | $ 2,500 | $2,500.00 citation paid Jun 10, 2022 |
| E-4195-0119 | 06/03/2022 | San Diego Gas & Electric | $ 11,000 | $11,000.00 citation paid Jul 01, 2022 |
| E-4195-0120 | 08/26/2022 | Silicon Valley Clean Energy Authority | $ 5,000 | $5,000.00 citation paid Oct 05, 2022 |
| E-4195-0121 | 08/30/2022 | EDF Industrial Power Services, LLC | $ 1,500 | $1,500.00 citation paid Sep 12, 2022 |
| E-4195-0122 | 09/06/2022 | CleanPowerSF | $ 20,000 | $20,000.00 citation paid Oct 13, 2022 |
| E-4195-0123 | 09/08/2022 | Direct Energy Business, LLC | $ 499,145 | $499,144.80 citation paid Sep 26, 2022 |
| E-4195-0124 | 09/13/2022 | Direct Energy Business, LLC | $ 1,733,021 | $1,733,020.80 citation paid Oct 13, 2022 |
| E-4195-0125 | 09/16/2022 | Orange County Power Authority | $ 415,406 | Appealed on Oct 31, 2022 in K.22-10-024. OCPA motioned to withdraw appeal on Dec 12, 2023. Payment for $415,406.40 received on 1/30/2024. |
| E-4195-0126 | 09/16/2022 | Central Coast Community Energy | $ 25,000 | $25,000.00 citation paid Jan 17, 2023 |
| E-4195-0127 | 09/21/2022 | Central Coast Community Energy | $ 506,098 | $506,098.40 citation paid Oct 10, 2022 |
| E-4195-0128 | 09/22/2022 | CleanPowerSF | $ 1,456,320 | $1,456,320.00 citation paid Oct 13, 2022 |
| E-4195-0129 | 09/30/2022 | East Bay Community Energy | $ 878,587 | $878,587.20 citation paid Oct 28, 2022 |
| E-4195-0130 | 10/07/2022 | Constellation New Energy Inc. | $ 28,000 | $28,000.00 citation paid Dec 11, 2023 |
| E-4195-0131 | 11/08/2022 | EDF Industrial Power Services, LLC | $ 1,500 | $1,500.00 citation paid Dec 06, 2022 |

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| Energy Citation # | Date Issued | Company | Citation Amount | Remarks |
|---|---|---|---|---|
| E-4195-0132 | 04/10/2023 | Central Coast Community Energy | $ 6,840,974 | $6,840,974.40 citation paid May 09, 2023 |
| E-4195-0133 | 04/17/2023 | Desert Community Energy | $ 374,647 | $374,647.20 citation paid Jun 27, 2024 |
| E-4195-0134 | 04/24/2023 | Orange County Power Authority | $ 147,408 | Appealed on May 24, 2023 in K.23-05-019. OCPA motioned to withdraw appeal on Dec 12, 2023. Payment for $147,408 received on Jan 30, 2024. |
| E-4195-0135 | 06/06/2023 | Sonoma Clean Power Authority | $ 442,012 | $442,012.00 citation paid Jul 06, 2023 |
| E-4195-0136 | 05/10/2023 | San Jose Clean Energy | $ 10,000 | $10,000.00 citation paid Jun 09, 2023 |
| E-4195-0137 | 05/10/2023 | Peninsula Clean Energy | $ 2,950,407 | $2,950,407.20 citation paid Jun 08, 2023 |
| E-4195-0138 | 07/27/2023 | Clean Power Alliance of Southern California | $ 4,000,938 | $4,000,938.40 citation paid Aug 28, 2023 |
| E-4195-0139 | 05/25/2023 | East Bay Community Energy | $ 10,000 | $10,000.00 citation paid Jul 12, 2023 |
| E-4195-0140 | 05/25/2023 | EDF Industrial Power Services, LLC | $ 50,490 | $50,490.00 citation paid Jul 12, 2023 |
| E-4195-0141 | 06/02/2023 | Regents of the University of California | $ 203,086 | $203,085.60 citation paid Jun 23, 2023 |
| E-4195-0142 | 06/06/2023 | Constellation New Energy Inc. | $ 2,705,408 | $2,705,408.00 citation paid Jul 06, 2023 |
| E-4195-0143 | 10/27/2023 | Silicon Valley Clean Energy | $ 3,012,248 | $3,012,248.00 citation appealed in K.23-11-015 on Nov 27, 2023 |
| E-4195-0144 | 07/03/2023 | EDF Industrial Power Services, LLC | $ 2,000 | $2,000.00 citation paid Jul 28, 2023 |
| E-4195-0146 | 08/14/2023 | Central Coast Community Energy | $ 159,130 | $159,129.60 citation paid Aug 23, 2023 |
| E-4195-0147 | 08/30/2023 | CleanPowerSF | $ 745,387 | $745,387.20 citation paid Sep 25, 2023 |
| E-4195-0148 | 09/15/2023 | Redwood Coast Energy Authority | $ 139,150 | $139,149.60 citation paid Oct 10, 2023 |
| E-4195-0149 | 09/20/2023 | Regents of the University of California | $ 34,898 | $34,898.40 citation paid Oct 02, 2023 |
| E-4195-0150 | 10/27/2023 | Redwood Coast Energy Authority | $ 123,965 | $123,964.80 citation paid Nov 16, 2023 |
| E-4195-0151 | 11/08/2023 | Central Coast Community Energy | $ 1,455,610 | $1,455,609.60 citation paid Dec 12, 2023 |
| E-4195-0152 | 11/16/2023 | San Diego Community Power | $ 4,019,761 | $4,019,760.80 citation paid Dec 15, 2023 |
| E-4195-0153 | 11/13/2023 | Regents of the University of California | $ 69,797 | $69,796.80 citation paid Dec 01, 2023 |
| E-4195-0154 | 11/16/2023 | Clean Energy Alliance | $ 226,262 | $226,262.40 citation paid Dec 05, 2023 |
| E-4195-0155 | 12/08/2023 | Clean Energy Alliance | $ 390,365 | $390,364.80 citation paid Dec 21, 2023 |
| E-4195-0156 | 12/20/2023 | Desert Community Energy | $ 151,049 | Appealed on Jan 19, 2024 in K. 24-01-013. DCE motioned to withdraw appeal on Jun 18, 2024. Payment for $151,049 received on Sept 4, 2024. |
| E-4195-0157 | 01/03/2024 | Desert Community Energy | $ 124,409 | Appealed on Feb 2, 2024 in K. 24-02-001. DCE motioned to withdraw appeal on Jun 18, 2024. Payment for $124.409 received on Sept 12, 2024. |
| E-4195-0158 | 01/25/2024 | Valley Clean Energy Alliance | $ 375,979 | $375,979.20 citation paid Feb 23, 2024 |
| E-4195-0159 | 01/29/2024 | Valley Clean Energy Alliance | $ 110,699 | $110,699.20 citation paid Feb 23, 2024 |
| E-4195-0160 | 01/31/2024 | Valley Clean Energy Alliance | $ 5,000 | $5,000.00 citation paid Feb 23, 2024 |
| E-4195-0161 | 03/15/2024 | Rancho Mirage Energy Authority | $ 128,050 | $128,049.60 citation paid Mar 26, 2024 |
| E-4195-0162 | 03/15/2024 | Clean Energy Alliance | $ 2,519,345 | $2,519,344.80 citation paid Apr 08, 2024 |
| E-4195-0163 | 03/21/2024 | Apple Valley Choice Energy | $ 217,915 | $217,915.20 citation paid Apr 11, 2024 |
| E-4195-0164 | 04/05/2024 | Pilot Power Group, LLC | $ 5,000 | $5,000.00 citation paid Apr 17, 2024 |
| E-4195-0165 | 03/29/2024 | Regents of the University of California | $ 533,333 | $533,332.80 citation paid Apr 29, 2024 |
| E-4195-0166 | 03/26/2024 | Pico Rivera Innovative Municipal Energy | $ 181,507 | $181,507.20 citation paid Apr 11, 2024 |
| E-4195-0167 | 04/05/2024 | Redwood Coast Energy Authority | $ 753,290 | $753,290.40 citation paid May 06, 2024 |
| E-4195-0168 | 04/04/2024 | Clean Energy Alliance | $ 35,431 | $35,431.20 citation paid Apr 30, 2024 |
| E-4195-0169 | 06/19/2024 | Desert Community Energy | $ 1,750,159 | $1,750,159.20 citation paid Jul 16, 2024 |
| E-4195-0170 | 04/04/2024 | Lancaster Choice Energy | $ 619,025 | $619,024.80 citation paid Apr 30, 2024 |
| E-4195-0171 | 04/04/2024 | San Jacinto Power | $ 139,771 | $139,771.20 citation paid Apr 16, 2024 |
| E-4195-0172 | 07/25/2024 | San Diego Community Power | $ 8,489,956 | $8,489,956.00 citation paid Aug 22, 2024 |
| E-4195-0173 | 04/30/2024 | San Diego Community Power | $ 10,000 | $10,000.00 citation appealed in K. 24-05-026 on May 30, 2024 |
| E-4195-0174 | 11/07/2024 | City of Palmdale | $ 1,500 | $1,500.00 citation paid Dec 09, 2024 |
| E-4195-0175 | 11/07/2024 | Pico Rivera Innovative Municipal Energy | $ 44,400 | $44,400.00 citation paid Nov 27, 2024 |
| E-4195-0176 | 11/07/2024 | Santa Barbara Clean Energy | $ 1,500 | $1,500.00 citation paid Dec 06, 2024 |
| E-4195-0177 | 11/07/2024 | Pomona Choice Energy | $ 1,500 | $1,500.00 citation paid Dec 06, 2024 |
| E-4195-0178 | 11/07/2024 | Pico Rivera Innovative Municipal Energy | $ 1,500 | $1,500.00 citation paid Dec 17, 2024 |
| E-4195-0179 | 11/07/2024 | Apple Valley Choice Energy | $ 1,500 | $1,500.00 citation paid Dec 09, 2024 |
| E-4195-0180 | 11/08/2024 | Apple Valley Choice Energy | $ 67,488 | $67,488.00 citation paid Nov 27, 2024 |
| E-4195-0181 | 11/07/2024 | Sonoma Clean Power | $ 10,000 | $10,000.00 citation paid Dec 09, 2024 |
| E-4195-0182 | 11/07/2024 | Calpine Power America | $ 1,500 | $1,500.00 citation paid Nov 22, 2024 |
| E-4195-0183 | 11/08/2024 | Lancaster Choice Energy | $ 150,072 | $150,072.00 citation paid Nov 27, 2024 |
| E-4195-0184 | 11/12/2024 | CleanPower SF | $ 10,000 | $10,000.00 citation paid Dec 12, 2024 |
| E-4195-0185 | 11/12/2024 | Clean Energy Alliance | $ 2,013,895 | $2,013,895.20 citation paid Dec 05, 2024 |
| E-4195-0186 | 11/14/2024 | Rancho Mirage Energy Authority | $ 73,704 | $73,704.00 citation paid Dec 16, 2024 |
| E-4195-0187 | 11/18/2024 | Clean Energy Alliance | $ 1,236,328 | $1,236,328.00 citation paid Dec 13, 2024 |
| E-4195-0188 | 11/15/2024 | San Jacinto Power | $ 60,384 | $60,384.00 citation paid Dec 19, 2024 |
| E-4195-0189 | 11/15/2024 | Rancho Mirage Energy Authority | $ 1,500 | $1,500.00 citation paid Dec 09, 2024 |
| E-4195-0190 | 11/15/2024 | San Jacinto Power | $ 1,500 | $1,500.00 citation paid Dec 19, 2024 |
| E-4195-0191 | 12/06/2024 | Lancaster Choice Energy | $ 1,500 | $1,500.00 citation paid Dec 20, 2024 |

* E-4195-0012 Inadvertantly Used Twice

EXHIBIT: SJCE #3
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ RES78574 - resolution adopting ERMP in 2018
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# RES78574 - RESOLUTION ADOPTING ERMP IN 2018

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# RESOLUTION NO. 78574

## A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A NEW COUNCIL POLICY NO. 1-23 ENTITLED "ENERGY RISK MANAGEMENT POLICY"

**WHEREAS,** on November 7, 2017, the City Council approved Ordinance No. 30028 to add Title 26 to the San José Municipal Code, establishing operational parameters for San José Clean Energy ("SJCE") including an obligation to prepare a Risk Management Policy ("Policy"); and

**WHEREAS,** the goals of the Policy are to: 1) serve SJCE's customers' needs, subject to Council-approved risk tolerance limits; 2) provide as much energy supply cost certainty as possible for SJCE's customers while maintaining a least-cost supply portfolio; and 3) meet all portfolio objectives such as renewable energy content and greenhouse gas-free supplies; and

**WHEREAS,** the Policy establishes a front, middle, and back office in compliance with Federal Energy Regulatory Commission requirements, and provides that the City Manager will establish a Risk Oversight Committee that will meet at least quarterly and is responsible for monitoring and controlling risks; and

**WHEREAS,** the Energy Risk Management Regulations ("ERMR") sets approved products and transaction limits, requiring that all contracts over $1 million and longer than six months obtain Council approval when possible; and

**WHEREAS,** the ERMR document provides more details on the roles, strategies, controls, and authorities described in the Policy, and in conjunction with the Policy provides a comprehensive energy risk management program; and

**WHEREAS,** approval of the Policy will allow SJCE to proceed with procurement of energy supplies to meet the Phase I load which is scheduled to launch on September 1, 2018; and

**WHEREAS,** the City Council desires to establish a new City Council Policy No. 1-23 entitled "Energy Risk Management Policy" and the City Manager will propose Energy Risk Management Regulations for the Risk Oversight Committee to adopt;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A new City Council Policy No. 1-23 entitled "Energy Risk Management Policy," which policy is attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein, is hereby approved.

ADOPTED this 1st day of May, 2018, by the following vote:

| | |
|---|---|
| AYES: | ARENAS, DAVIS, JONES, KHAMIS, NGUYEN, PERALEZ; LICCARDO. |
| NOES: | NONE. |
| ABSENT: | CARRASCO, DIEP, JIMENEZ, ROCHA. |
| DISQUALIFIED: | NONE. |

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

**EXHIBIT A**

***City of San José, California***

# COUNCIL POLICY

| TITLE ENERGY RISK MANAGEMENT POLICY | PAGE 1 of 9 | POLICY NUMBER 1-23 |
|---|---|---|
| **EFFECTIVE DATE May 1, 2017** | **REVISED DATE** | |
| **APPROVED BY COUNCIL ACTION: 5/1/2018, Item 7.1, Res. No. 78574** | | |

## 1.0 PHILOSOPHY, OBJECTIVES AND SCOPE

This Energy Risk Management Policy (ERMP) outlines the philosophies and objectives of San José Community Energy (SJCE) as set by the San José City Council ("Council"). The Energy Risk Management Regulations (ERMR) also adopted by SJCE expands on the roles, strategies, controls, and authorities authorized in this policy to form a comprehensive energy risk management program. The ERMR shall be read in conjunction with this ERMP.

### 1.1 Risk Philosophy

The overall goal of this ERMP is to:

a. Serve SJCE's customers' needs subject to Council approved risk tolerance limits.
b. Provide as much energy supply cost certainty for SJCE's customers as possible while maintaining a least cost supply portfolio.
c. Meet all the portfolio objectives such as renewable energy content and greenhouse gas--free supplies.

As a city, SJCE is in the business of generation, transmission, and procurement of energy for the benefit of its customers. SJCE's objective is to develop the least cost supply portfolio to meet load requirements of its customers, while maximizing revenues from sales of surplus energy, capacity, and other wholesale energy and transmission services (e.g. resource optimization). However, unlike a private-sector entity, SJCE's primary purpose in the power supply business is to serve its customers. SJCE's goal is to be a cost hedger for its customers' load and, is therefore, precluded by this policy from engaging in speculative activities typical to many organizations orientated toward profit maximization.

SJCE management recognizes that certain risks are incidental to normal power supply operations and hedging activities. SJCE's goal is to avoid unnecessary risk and to limit, to the extent practicable, any risks associated with normal cost-hedging activities. This document serves as a vehicle to describe and define the limits for activities considered appropriate for SJCE in a normal course of business.

### 1.2 Business Activities

A primary part of SJCE's main business is to procure power supplies, capacity, and reserves to meet its customer load requirements. The resource (capacity/energy) supply portfolio may consist of fixed and variable priced supply contracts of varying lengths and agreements for other related supplies and services needed to ensure reliable delivery of electricity to SJCE's customers.

### 1.3 Transacting Objectives

SJCE's overall transacting objective is to meet the load requirements of its customers with an optimized resource supply portfolio. SJCE's objectives when transacting on behalf of its customers for the procurement of energy and energy related supplies and services are as follows:

a. Meet customer load requirements including energy, capacity, and reserves;
b. Provide stable rates for SJCE's customers;
c. Obtain the best available price for power supply while complying with the requirements of this policy and other objectives established by the Council (e.g. renewable energy and GHG-free policy goals);
d. Act to limit exposure to extreme market system changes;
e. Follow effective wholesale counterparty credit management procedures; and
f. Develop and maintain SJCE's investment grade credit rating.

### 1.4 Scope of Policy

This ERMP addresses risks arising from SJCE's participation in the wholesale energy markets, and applies to all energy and energy related transactions made by SJCE. This ERMP does not address the following types of general property and casualty business risk: fire, accident, and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in wholesale energy markets as herein defined.

SJCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. From the perspective of risk mitigation, SJCE's primary objective is to cover load and optimize the value of assets. Taking risks to arbitrage market opportunities, or risks unrelated to SJCE's normal power supply business activities, is not permitted.

SJCE is also exposed to regulatory and operational risks. However, these exposures are not quantifiable as they affect structural change. As a result, these risk categories are managed as separate enterprise risk exposures and are not directly governed by this ERMP.

This ERMP prescribes the management organization, authority and processes to monitor, measure, and control the risks to which SJCE is exposed in the normal course of business. Methodologies used to measure, monitor, and control these risks shall be established by the City Manager's Risk Oversight Committee (ROC), in accordance with sound utility practices as included in the ERMR.

### 1.5 Applicability

This ERMP is effective immediately upon its adoption by the Council. It applies to SJCE's wholesale supply operations, short and long-term contracting for energy, capacity, credit risk management, and other related ancillary activities undertaken by SJCE.

### 1.6 Policy Review and Amendments

Prudence is required in implementing all policies and procedures. Market and industry norms, technology and risk tolerances tend to change over time. Therefore, this policy should be reviewed as needed, to make adjustments in response to changes in business objectives and/or industry norms. *At a minimum this policy should be reviewed annually*. Amendments to this ERMP shall be done only by approved Resolution of the Council.

## 2.0 RISK STRATEGY & PARAMETERS

An important aspect of implementing an overall energy risk management policy is the development of related strategies to mitigate all related risks associated with energy transacting activities. The key strategies of SJCE are outlined below.

### 2.1 Counterparty Risk Management

Counterparty risk is defined as the exposure to economic loss resulting from default by a party to a contract (e.g., a counterparty). Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. For all fixed price energy transactions, the counterparty must possess at least a BBB+ (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). SJCE staff may consider counterparties with a rating below investment grade, or a counterparty without a NRSRO rating on a case-by-case basis, with the approval of the ROC.

Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with commodity transactions in the energy markets. The objective is to preserve SJCE's capital, liquidity, and supply reliability by limiting counterparty credit risk and supplier concentration to acceptable levels. Methodologies to achieve this objective are set forth in the ERMR.

### 2.2 Balanced Load

SJCE shall maintain an integrated and balanced portfolio of resources to cover its customer load with a risk framework that includes both volume and cost of the portfolio.

### 2.3 Minimum Coverage Requirements

SJCE shall establish minimum coverage requirements for capacity and energy as determined by the ROC and outlined in the ERMR.

### 2.4 Diversification of Portfolio

SJCE shall strive to develop a resource portfolio that includes diversification in the type of resources, contract duration, geographic location, counterparty, pricing terms, cash reserves and types of products.

### 2.5 Purchase to Cover Load Serving Obligations – No Speculation

As discussed in Section 1.3, SJCE's overall objective for energy procurement activities is to cover the load serving obligations of its customers. In the course of performing these activities, SJCE shall not engage in activities that expose its customers to speculative transactional risks, and shall only utilize approved transaction parameters as determined by the ROC and outlined in the ERMR.

### 2.6 Use of Derivatives and Financial Transactions

Use of financial derivatives or transactions (as opposed to physical or "embedded" options) is *not* allowed by SJCE. These include transactions used to set price caps and floors, or hedge against load/price volatility. Examples include:

- Exchange traded Puts and Calls;
- Electric Futures;
- Electric Options; and
- Weather Derivatives.

The use of Congestion Revenue Rights (CRR's) *is* permitted by SJCE and is not considered use of derivatives or financial transactions. CRR's are financial instruments made available through the CAISO's CRR Allocations and Auctions. CRRs are acquired primarily to offset transmission congestion costs.

## 3.0 RISK CONTROLS

### 3.1 Control Principles

SJCE will strive to conduct its energy risk management activities in accordance with best practices of the energy industry, but implementing such practices must be cost justified and balanced between costs and benefits. Processes and control systems

must be in place that allow SJCE to identify, measure, monitor, control, and track its risk exposures. These processes and control systems shall include the following risk management control principles:

- Appropriate segregation of duties and internal controls will be used;
- Appropriate systems to ensure accurate and effective management reporting;
- Necessary resources in place to achieve management objectives;
- Attract and retain skilled and trained personnel;
- Cross-train and provide cross coverage;
- Employees conducting energy transactions are free of conflicts of interest;
- Authority and approval delegation is commensurate with accountability and capability;
- Performance measurement and reporting incorporate risk and return measures; and
- Ongoing monitoring of control effectiveness.

**3.2 Internal Controls**

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to 1) prevent errors and improprieties, 2) ensure accurate and timely reporting of results of operations and other information pertinent to management, and 3) facilitate attainment of business objectives.

**3.3 Segregation of Duties**

Responsibilities related to energy transacting shall be segregated in a manner consistent with the control principles listed above by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office operations. Such roles and responsibilities can also be provided by a qualified third party services provider. Specific roles, responsibilities, and organizational structure of these functions are outlined in Section 4 of the ERMP.

These controls shall be fully integrated into all business activities of SJCE, and there shall be active participation by senior management in risk management processes.

**3.4 Conflicts of Interest**

In accordance with the California Political Reform Act, consultants shall cause each person performing services for the SJCE to complete annual conflict of interest filings and disclose investments as required by the FPPC and this Section.

All SJCE employees who are engaged in energy supply resource transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the SJCE Conflict of Interest Code are required to complete

annual conflict of interest filings on FPPC Form 700 and disclose investments as required by that code.

In addition to the foregoing disclosure requirement, SJCE employees engaged in energy supply resource transactions, counterparty credit evaluation or oversight of the foregoing, are barred from investing in any company with whom SJCE has consummated energy or related purchases or sales within the last two years.

Such employees must divest existing direct holdings in energy counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size ($2,000) to require disclosure on FPPC Form 700.

SJCE employees supervising staff who are subject to this policy are responsible for routinely reviewing Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. City Attorney will assist in reviewing these forms and providing legal advice in connection with such reviews upon request.

## 4.0 ROLES, RESPONSIBILITIES, & ORGANIZATION

This section of the ERMP defines the overall roles and responsibilities for implementation of this ERMP. The coordinated efforts of personnel across several Departments are required to successfully implement SJCE's risk management program. Section 4 of the ERMP outlines the basic roles and responsibilities of each organizational function. Specific details and the specific roles and responsibilities of the oversight and operational divisions within the energy risk management program structure at SJCE are outlined in the ERMR, as developed by the City Manager's ROC and revised from time to time.

### 4.1 City Council

The Council has the ultimate oversight over SJCE operations and is responsible for establishing an organizational-wide framework for risk management and ensuring that risk management results are achieved as planned. The Council shall approve and establish organizational policies for risk management and delegate to the City Manager the responsibility for implementing the ERMP. With responsibility for the ultimate oversight over SJCE operations, the Council shall be responsible to ensure the risk management results are achieved in accordance with the ERMP.

### 4.2 City Manager

The City Manager serves as the chief administrative officer of the City. The City Manager is responsible for administering City operations and staff, advising the City Council, managing the day-to-day delivery of public services, and implementing Council policies. The Council acknowledges that the City Manager shall establish the ROC and may delegate certain functions to the ROC, which delegation is ratified by this ERMP.

### 4.3 Director of Community Energy

The Director of Community Energy ("Director") has overall responsibility for implementing the ERMP and for communicating risk management issues to the City Manager and Council. The Director shall be responsible for delegating specific duties for carrying out the policy and ensuring compliance with it by all affected SJCE employees or contractors.

### 4.4 Risk Oversight Committee

The Risk Oversight Committee (ROC) is responsible for overseeing compliance with risk management policies within SJCE. The ROC serves as the highest level of organizational risk management. The ROC shall consist of seven voting members: the City Manager, the Director of Community Energy, the Director of Finance, the City's Risk Manager, the Budget Director, the Community Energy Department's Deputy Director of Power Resources, and the Community Energy Department's Division Manager for Administration and Finance. The City Attorney will provide legal advice to the ROC. A quorum for the ROC to do business shall be no less than five ROC Committee members, or their designees.

Each ROC member shall have one vote, and shall appoint a voting alternate. The ROC will meet at least quarterly, to act on the responsibilities mentioned above. Minutes to each meeting will be maintained per the City's record retention policy. The Director of Community Energy shall make annual reports to the appropriate Committee and Council regarding business transacted by the ROC.

The ROC shall have the responsibility for ensuring that business is conducted in accordance with the ERMP. The City Manager's ROC shall adopt and keep current "Energy Risk Management Regulations," which shall define in detail the internal controls, strategies, and processes for managing risks covered under the ERMP. Specific ROC responsibilities are outlined in detail in the ERMR.

### 4.5 Front Office (Planning and Procurement)

The Deputy Director of Power Resources is responsible for managing the Front Office, and can be supported by qualified third party suppliers. The Front Office is responsible for resource planning and procuring resources to meet the physical, financial, and contractual requirements of SJCE, with load/resource balancing provisions and such other arrangements as may be approved by the Council in the future. The function includes contract administration, managing the risk assumptions for electricity transactions, including physical and financial needs analyses, energy purchases and sales, procurements of capacity, ancillary services and coordinating energy delivery scheduling. The Front Office is responsible to ensure that the procedures and processes needed to transact business within the ERMP are in place and they perform all duties related to actual transacting in the wholesale energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. Front Office activities and detailed responsibilities are outlined in the ERMR.

### 4.6 Middle Office (Controls and Reporting)

The Community Energy Department's Division Manager of Administration and Finance is responsible for managing the Middle Office in collaboration with the Finance Department. The Community Energy Department's Administration and Finance Division will conduct the duties of the Middle Office, and/or are supported by a qualified consultants and service providers. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting energy products and services. The Middle Office must be independent from the Front Office functions. Detailed responsibilities of the Middle Office are described in the ERMR.

### 4.7 Back Office (Settlements and Recording)

The Community Energy Department's Division Manager of Administration and Finance is responsible for managing the Back Office in collaboration with the Finance Department. The Back Office is primarily responsible for settlement of bills, recording transactions, bookkeeping and accounting, and contract compliance. It is responsible for providing assurance of accurate transaction records and settlements. Back Office functions are conducted by personnel in the Community Energy Department's Administration and Finance Division and are supported by staff in the Finance Department and qualified consultants and service providers. Detailed responsibilities of the Back Office are described in the ERMR.

### 4.8 Auxiliary Functions

Additional issues impacting the overall power supply and risk management program include establishment of financial reserve requirements, which are generated by auxiliary support functions in the Community Energy Department's Administration and Finance Division and the City Manager's Budget Office.

The Community Energy Department's Administration and Finance Division in collaboration with the City Manager's Budget Office is responsible for preparation of the budget and the calculation of rates used to bill customers for their related power supply usage. They are also responsible for the establishment of reserves necessary for credit risks related to counterparty credit as mentioned in the ERMP, but as more clearly defined in the ERMR.

### 4.9 Authorities, Delegations, Limits, and Prohibitions

All executed transactions shall conform to the policies set forth herein. It shall be the responsibility of the ROC, to establish appropriate individual transacting authority limits for the various personnel involved in the Front Office function. All staff with designated responsibility for Middle Office or Back Office functions are strictly prohibited from executing any wholesale transactions. The Middle Office shall be responsible for

informing counterparties of such approved authorizations, including transacting authority and restrictions, along with product types and/or term and dollar limits.

## 5.0 POLICY COMPLIANCE

### 5.1 Compliance Exceptions

Compliance exceptions are actions which violate the authority limits or directives set forth herein or in the ERMR as developed and adopted pursuant hereto by the ROC.

### 5.2 Reporting of Exceptions

The Director of Community Energy shall notify the ROC of exceptions to mandated policies, procedures, and regulations within 48 hours after they are identified, and ensure Front Office prepare a full report for review and discussion at the next ROC meeting.

### 5.3 Audit

Compliance with this ERMP and with the specific ERMR requirements instituted pursuant to this ERMP, shall be subject to examination by the City Auditor and SJCE's independent auditors or by such other reviewers that SJCE or ROC may appoint to evaluate the effectiveness of mandated controls.

### 5.4 Reserves

The ROC is responsible for ensuring adequate reserves for energy price exposure and credit losses are maintained by SJCE. The reserve estimate methodology, should be established in collaboration with the City Manager's Budget Office and it shall be reviewed and approved as needed to ensure appropriate reserve levels are maintained and funded. It should be set and reviewed annually as part of the Budget process.

### 5.5 Systems, Tools, and Training

SJCE employees who are authorized to perform energy risk management functions on behalf of SJCE shall be provided with the necessary systems and tools to support all risk management processes.

Provision shall be made in the budgets submitted for each group which performs market risk management functions on behalf of SJCE for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools.

Provision shall also be made in the budgets submitted for each group which performs market risk management functions on behalf of SJCE for managers and staff to attend seminars and courses in risk management on a regular basis.

EXHIBIT: SJCE #4
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Ord. 30028
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# ORD. 30028

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 30028",** the original copy of which is attached hereto, was passed for publication of title on the **7th day of November, 2017,** was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **28th day of November, 2017,** by the following vote:

AYES: ARENAS, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: CARRASCO, PERALEZ.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of **29th day of December, 2017.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **1st day of December, 2017.**

(SEAL)_____

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

# ORDINANCE NO. 30028

## AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING THE SAN JOSE MUNICIPAL CODE TO ADD TITLE 26 FOR COMMUNITY ENERGY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

The San José Municipal Code is hereby amended to add Title 26 to be numbered, entitled and to read as follows:

## TITLE 26
## COMMUNITY ENERGY

## CHAPTER 26.01
## FINDINGS AND PURPOSE

### 26.01.010 Findings

The City Council finds and declares as follows:

A. California Public Utilities Code Section 331.1 authorizes any city or county in California, upon approval of its governing board, to combine the electricity loads of its municipal needs, residents and businesses into a community-wide electricity program known as Community Choice Aggregation.

B. Community Choice Aggregation is a method by which the City of San José can help to ensure the provision of clean, reasonably priced and reliable electricity to residents and businesses in San José.

C. Community Choice Aggregation is a voluntary program enabling residents and businesses to opt out and continue to receive electricity from PG&E.

D. In March 2017, the City Council accepted a business plan prepared by EES Consulting, Inc. that concluded that the establishment of Community Choice Aggregation in the City is financially prudent and may yield considerable benefits for residents and businesses in the City.

**26.01.020 Purpose**

The purpose of this Title is to enhance the public welfare by establishing Community Choice Aggregation in the City to be called "San José Clean Energy" and to give its residents and businesses local control over electricity prices, resources and quality of service.

## CHAPTER 26.10
## DEFINITIONS

**26.10.100 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Title.

**26.10.101 Bilateral Agreement**

"Bilateral agreement" means a Transaction executed directly between two parties without financial participation in the Transaction by a broker, exchange or other intermediary.

**26.10.102 CAISO**

"CAISO" means the California Independent System Operator Corporation or successor entity responsible for the operation of the electric grid.

**26.10.103 Community Energy**

"Community Energy" means the San José Clean Energy program.

**26.10.104 Counterparty**

"Counterparty" means the other party, whether a buyer or a seller to a Transaction with San José Clean Energy.

**26.10.105 CPUC**

"CPUC" means the California Public Utilities Commission or successor agency.

**26.10.106 Director**

"Director" means the Director of the Community Energy Department.

**26.10.107 Eligible IOU End User**

"Eligible IOU End User" means a resident or business who would buy energy from the IOU.

**26.10.108 Feed-in-Tariff**

"Feed-in tariff" means that program available to customers whereby energy and capacity can be sold to San José Clean Energy under standard terms, conditions and pricing as may be developed by San José Clean Energy from time to time.

**26.10.109 Greenhouse Gas**

"Greenhouse Gas" or "GHG" refers to gases such as carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydro fluorocarbons, perfluorocarbons and other fluorinated gases that have been determined to contribute to climate change.

**26.10.110 Greenhouse Gas Free**

"Greenhouse Gas Free" means energy sources that produce electricity without emitting Greenhouse Gases.

**26.10.111 Investor Owned Utility**

"Investor Owned Utility" or "IOU" means a public utility electrical corporation under the jurisdiction of the California Public Utilities Commission, but excludes utility operations by cooperatives or publicly-owned utilities.

**26.10.112 Long Term Transaction**

"Long Term Transaction" means a contract to acquire power with a term of more than one and up to 25 years.

**26.10.113 Net Energy Metering Tariffs**

"Net energy metering tariffs" (or "NEM tariffs") means that program available to customers whereby energy production at the premises in excess of onsite consumption receives compensation. Such program may be implemented in conjunction with PG&E's tariffs adopted pursuant to state law.

**26.10.114 PG&E**

"PG&E" refers to Pacific Gas & Electric Company which is the IOU in the City's electric service area.

**26.10.115 Power Products**

"Power Products" means energy, renewable energy, capacity, ancillary services, energy efficiency, demand respond, energy storage, and any products related to the foregoing.

**26.10.116 Power Purchase Agreement**

"Power Purchase Agreement" or "PPA" means a contract between two entities under which the parties agree to sell and buy Power Products to and from one another.

**26.10.117 Renewables Portfolio Standard**

"Renewables Portfolio Standard" or "RPS" means the state mandate for load serving entities to procure energy from eligible renewable energy resources as codified at California Public Utilities Code section 399.11 *et seq.* and California Public Resources Code sections 25740 through 25751, as such codes are amended and supplemented from time to time, and as implemented by the California Public Utilities Commission and the California Energy Commission.

**26.10.118 San Jose Clean Energy**

"San Jose Clean Energy" means the Community Choice Aggregation program created by this Title.

**26.10.119 Short Term Transaction**

"Short Term Transaction" means a contract to acquire one or more Power Products with a term of one year or less.

**26.10.120 Speculative Buying and Selling**

"Speculative Buying and Selling" is defined as buying energy, capacity or associated product not reasonably anticipated to be used for meeting forecasted retail loads commercial commitments or regulatory requirements at the time of the Transaction..

**26.10.121 Transaction**

"Transaction" means a binding contract between the City and a Counterparty for the purchase and sale of one or more Power Products for a specific period of time.

## CHAPTER 26.20
## GENERAL PROVISIONS

**26.20.010 San José Clean Energy**

The Community Energy Department administers and manages San José Clean Energy.

**26.20.020 Power Source Options**

San José Clean Energy shall provide options to its customers about the percentage of renewable energy in their power mix, but in no event shall San José Clean Energy offer a power mix option lower than the Renewables Portfolio Standard procurement level associated with a particular year. The City Council shall establish the power mix options that will be available to San José Clean Energy customers by resolution.

**26.20.030 Quantity of Electricity Usage**

All electricity supplied to customers shall be measured by means of electricity meters controlled by the IOU pursuant to applicable regulations by the CPUC or CAISO.

**26.20.040 Option to Opt Out of San José Clean Energy**

No resident or business shall be obligated to participate as a customer in the San José Clean Energy program. All new customers shall be provided the opportunity to opt out of San José Clean Energy and shall receive notice of the option to opt out in accordance with California Public Utilities Code section 366.2 (c), at a minimum. Eligible IOU end users that do not affirmatively opt out will become customers of San José Clean Energy.

**26.20.050 Standards of Service**

San José Clean Energy will supply power in a safe manner consistent with industry standards by causing the Power Products it purchases to be made available for transmission and distribution by lines that are maintained by PG&E. PG&E will continue to be responsible for providing safe and reliable electricity delivery to customers. San José Clean Energy cannot guarantee all services will be without disruption.

## CHAPTER 26.30
## REGULATORY COMPLIANCE

### 26.30.010 Purpose

The purpose of this Chapter is to assure timely compliance with regulatory mandates applicable to San José Clean Energy.

### 26.30.020 Reporting Authority

The Director shall submit all reports, plans and data required to comply with San Jose Clean Energy's regulatory requirements. On a quarterly basis, the Director shall provide reports to the City Council listing the plans and reports submitted in the past quarter to the various regulatory agencies. Each quarterly report shall be submitted no later than 45 days following the end of the previous quarter. The quarterly report required in this Section may be combined with the quarterly reporting required in Section 26.50.040.

## CHAPTER 26.40
## RATES AND CHARGES FOR ELECTRICITY

### 26.40.010 Purpose of Rates and Charges

The purpose of the provisions of this Chapter 26.40 is to establish a process for setting electricity rates that will generate sufficient revenue to meet the anticipated expenditures required under Section 4.80 of this Code and to generate additional revenues to maintain adequate reserves and to fund energy efficiency and other energy programs and pilots as may be established by the City Council. At least one power mix shall be provided with rates equal to or below similar PG&E rates, provided that the rates furnish sufficient revenue to recover all expenses, including payment to

Counterparties for Power Products, debt service, credit requirements, other expenditure requirements and to build prudent reserves for San José Clean Energy.

**26.40.020 Establishment of Electricity Rates and Charges**

A. Rates and charges for electricity, including any meter charges, demand charges, non-bypassable charges or other regulatory charges, and volumetric rates, shall be established from time to time by resolution of the City Council.

B. Rates shall not be adjusted more than twice in any fiscal year absent a finding of extraordinary circumstances by the City Council.

C. Rates may vary based on the customer's choice of electricity supply options and associated resource costs, providing that all customer options shall meet or exceed the Renewables Portfolio Standard set by State of California as applies for a specific compliance period.

D. Written notice of any proposed change in rates for electricity shall be provided in advance of approval of any rate change as follows:

1. Notice shall be published in a newspaper of general circulation at least fifteen days in advance of the City Council consideration of such changes.

2. No more than 45 days, but no less than 30 days prior to the City Council's consideration of a rate changes, notice shall be sent directly to the customer with the customer's regular bills if possible, or by separate letter or by other means intended to provide timely notice to the customer.

**26.40.030 Payment**

A. The IOU shall bill customers for electricity charges.

B. Any bill for electricity that is not paid by the due date specified in the bill shall be deemed delinquent.

C. If any bill for electricity becomes delinquent, a late charge in an amount established by resolution shall be added to the bill. The late charge shall be in addition to any other administrative charges or IOU charges imposed.

D. Customers that fail to bring their accounts current within 30 days after receiving a delinquent notice will be deemed to have opted out of electricity service provided by San José Clean Energy and will be promptly returned to IOU service. In addition to any late fees and administrative charges, customers returning to electricity service provided by the incumbent IOU shall remain responsible to pay all delinquent charges.

**26.40.040 Special Rates and Charges**

A. San José Clean Energy shall provide customers information and assistance to qualifying households that may be eligible for discounts on their energy bills, such as through the California Alternate Rates for Energy Program or any similar IOU offered programs. San José Clean Energy may develop additional rate assistance programs that supplement IOU programs for qualifying customers, subject to approval by the City Council.

B. San José Clean Energy may provide other rate designs or programs as approved by the City Council.

C. San José Clean Energy may charge a termination fee in an amount established by resolution to a customer who opts to be served by the IOU after expiration of the initial 60-day post enrollment opt-out period for the purpose of recovering administrative and other costs related to returning customers to IOU service.

## CHAPTER 26.50
## ENERGY PROCUREMENT

### 26.50.010 Purpose and Policy

The purpose of this chapter is to establish power procurement processes that will allow San José Clean Energy to procure energy, capacity and related services, including procurement to meet or exceed the Renewables Portfolio Standard and to best meet the needs of its customers in a timely manner.

### 26.50.020 Transactions

Based on forecasted needs, the City may enter into contracts to procure Power Products for a term up to 25 years, , under bilateral agreements, net energy metering, Feed-in-Tariffs or through a competitive bidding process.

### 26.50.030 Bilateral Transactions, Net Energy Metering Tariffs and Feed-in Tariffs

Except as provided in Chapter 4.04, the City Council reserves the authority to approve all bilateral agreements for or related to net energy metering or Feed-in-Tariffs applicable to San José Clean Energy.

**26.50.040 Short Term Trading Authority and Transaction Limits**

A. The City Council recognizes that meeting the energy needs of its customers from time to time will require Short Term Transactions to balance the load and secure Power Products necessary to meet certain regulatory requirements. To allow for these Short Term Transactions, the City Council hereby authorizes the Director or his/her designee to enter into Short Term Transactions consistent with this section. The Director shall have authority to enter into Short Term Transactions not to exceed Five Hundred Thousand Dollars ($500,000) each day for the following:

1. Where necessary to match the forecasted load to the existing energy supply portfolio;

2. To comply with regulatory obligations; or

3. Any other commercially reasonable purpose for the benefit of San José Clean Energy and its customers.

B. The Director shall submit quarterly reports to the City Council summarizing the number of Short Term Transactions and the total cost of those transactions during the previous quarter. Each quarterly report shall be submitted no later than 45 days following the end of the quarter. The quarterly report required in this Section may be combined with the quarterly reporting required under Section 26.30.020.

**26.50.050 Risk Management**

A. The Director shall submit a Risk Management Policy to the City Council for approval. The Risk Management Policy shall be reviewed annually, or as directed by City Council, and any changes shall be approved by the City Council.

B. All contracts for any Transactions shall contain appropriate risk management provisions consistent with the Risk Management Policy.

C. The Risk Management Policy shall provide for appropriate reserves to mitigate operational risks.

**26.50.060 Counterparties**

A. Wholesale trading shall be carried out only with Counterparties meeting minimum standards of creditworthiness established by the Director of Finance. The City shall endeavor to work with counterparties that conduct their business in a prudent and ethical manner.

B. Counterparties may be required to post a guarantee or security in an amount and with instruments approved by the Director of Finance in conformance with the Risk Management Policy, in a form that is approved by the City Attorney.

**26.50.070 No Speculative Buying and Selling**

Speculative Buying and Selling of Power Products on behalf of San José Clean Energy shall be prohibited.

## CHAPTER 26.60

**26.60.010 Report to Council.**

At least once each calendar year, the city manager, or designee, shall file with the City Council a report that lists all actions and transactions that have occurred with regard to this Title.

PASSED FOR PUBLICATION of title this 7th day of November, 2017, by the following vote:

| | |
|---|---|
| AYES: | CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, PERALEZ; LICCARDO. |
| NOES: | NONE. |
| ABSENT: | ARENAS, ROCHA. |
| DISQUALIFIED: | NONE. |

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT: SJCE #5
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Ord. 29988
DATE IDENT. 04/22/25 RECD.04/22/25
ALJ: GERALD F. KELLY

# ORD. 29988

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, CMC, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 29988",** the original copy of which is attached hereto, was adopted on the **29th day of August, 2017,** by the following vote:

| | |
|---|---|
| AYES: | ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, PERALEZ, ROCHA; LICCARDO. |
| NOES: | NONE. |
| ABSENT: | NONE. |
| DISQUALIFIED: | NONE. |

Said ordinance is effective as of **August 29, 2017.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **22nd day of November, 2017.**

(SEAL)_____

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

**ORDINANCE NO. 29988**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 29962 TO APPROPRIATE MONEYS IN THE SAN JOSE CLEAN ENERGY FUND; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE ON OCTOBER 13, 2017**

**WHEREAS,** it has been certified that there will be available for appropriation in the San José Clean Energy Fund in the fiscal year 2017-2018 moneys in excess of those heretofore appropriated therefrom, said excess being at least $5,376,000;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

SECTION 1. Section 39.01 of Ordinance No. 29962 is hereby amended to read as fully set forth on EXHIBIT A, entitled "AMENDMENTS TO ORD. 29962", which is attached hereto and incorporated herein as though fully set forth in this Section of this Ordinance.

SECTION 2. This ordinance shall become effective on October 13, 2017.

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/ /

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ADOPTED IN ACCORDANCE WITH CHARTER SECTIONS 605(c) and 1208 this 29th day of August, 2017, by the following vote:

| | |
|---|---|
| AYES: | ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, PERALEZ, ROCHA; LICCARDO. |
| NOES: | NONE. |
| ABSENT: | NONE. |
| DISQUALIFIED: | NONE. |

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A
AMENDMENTS TO ORD. 29962

## 2017-2018 APPROPRIATION ORDINANCE

| SECTION NO | ITEM NO | | CURRENT APPROPRIATION |
|---|---|---|---|
| | | **San José Clean Energy** | |
| 39.01 | | | |
| | | The following use of funds are estimated in the San Jose Clean Energy Fund during the City's Fiscal Year. | |
| | | **Ending Fund Balance** | |
| | | Operations and Maintenance Reserve | |
| | | | 500,000 |
| | | | **500,000** |
| | | **To the City Attorney's Office for:** | |
| | | Personal Services | |
| | | | 444,000 |
| | | | **444,000** |
| | | **To the Community Energy Department for:** | |
| | | Personal Services | |
| | | | 1,169,000 |
| | | Non-Personal/Equipment | |
| | | | 2,558,000 |
| | | Bonding and Security (CPUC) | |
| | | | 100,000 |
| | | Pacific Gas & Electric Security Deposit | |
| | | | 315,000 |
| | | | **4,142,000** |
| | | **To the Environmental Services Department for:** | |
| | | Personal Services | |
| | | | 40,000 |
| | | | **40,000** |
| | | **To the Finance Department for:** | |
| | | Debt Service | |
| | | | 250,000 |
| | | | **250,000** |
| **39.01** | **San José Clean Energy** | | **5,376,000** |

EXHIBIT: SJCE #6
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ January 26 2018, San Jose Community Energy Department Status Update Memorandum
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# JANUARY 26, 2018, SAN JOSE COMMUNITY ENERGY DEPARTMENT STATUS UPDATE MEMORANDUM,

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

**COUNCIL AGENDA: 01/30/18**
**FILE: 18-092**
**ITEM: 3.7**

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# *Memorandum*

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Lori Mitchell

**SUBJECT: SAN JOSE COMMUNITY ENERGY DEPARTMENT STATUS UPDATE**

**DATE:** January 26, 2018

Approved D-DSyC Date 1/26/18

**REPLACEMENT**

## REASON FOR REPLACEMENT

Clarifications and corrections to the Phase 1 Update section.

## RECOMMENDATION

Accept a status update on the Community Energy Department.

## OUTCOME

Accept the following updates:

1. Schedule Update
2. Phase 1 Update
3. Staffing Plan Adjustments
4. 2017 Legislative Session Related to Clean Energy

## BACKGROUND

In May of 2017, City Council approved proceeding with the establishment of San José Clean Energy (SJCE). Since that time, significant progress has been made to launch the program. In August of 2017, City Council approved a resolution adopting the SJCE Implementation Plan and Statement of Intent and directed staff to submit this document to the CPUC. City Council also approved the initial budget and staffing plan for the establishment of the Community Energy Department. The need for some flexibility was anticipated, as was referenced in the Staffing

Plan section of the memorandum to Mayor and City Council that was approved on August 29, 2017.

On September 19, 2017, the Implementation Plan was submitted to the CPUC. The CPUC had 90 days to review and certify the Implementation Plan. The CPUC certified the plan on December 19, 2017. In October of 2017, the City Council appointed the Director of the Community Energy Department and the Director began working on November 20, 2017. Also in November of 2017, the City Council approved an ordinance to add Title 26 to the San José Municipal Code that provides procedures for the operation and management of San José Clean Energy. These were all important steps to support the development and formation of SJCE.

## ANALYSIS

1. Schedule Update

Although much has been accomplished to support the planning, formation, and development of the new Department, there remains a significant amount of work to support the implementation and operation of San José Clean Energy. Attachment 1 (Schedule Overview) includes a summary of the critical items that must be completed prior to launch. ***It is recommended that the launch date of Phase 1 be moved to summer 2018.*** This schedule adjustment will allow for the required time to test the data exchange with PG&E and to finalize the required contracts and service agreements to support the operation of the department as well as to hire key staff.

2. Phase 1 Update

The Phase 1 municipal load has also been further evaluated and we expect that the load will increase to roughly 150 GWh verses the 130 GWh that was originally anticipated. We are also evaluating the possibility of serving additional customers that want to enroll early. This will lead to larger revenues which will help support the initial fixed costs associated with starting SJCE. It will also require additional funds to support the energy contracts to serve these customers. We are working on a financing plan to adequately support this Phase of the program.

3. Staffing Plan Adjustments

To support a successful launch, it will be important to bring on key staff as outlined in the staffing plan and schedule update. It was anticipated, upon appointment of the Director, there was a possibility that new City classifications might need to be created or that the timing of hiring positions between fiscal years might need to be revised.

After further review and analysis of the types of responsibilities to be overseen by each functional area as well as comparison of other Community Choice Aggregation (CCA) program structures in California, several changes are recommended. Attachment 2 (Staffing Plan Overview) provides an overview of these recommendations as well as a proposed organizational chart and comparison of the originally approved organizational chart. These changes will be brought forward for City Council consideration on February 6, 2018.

It is important to note that after start-up, additional positions will be needed to support operations. Longer-term operating CCE's such as Marin Clean Energy and CleanPowerSF both have over 50 positions.

4. 2017 Legislative Session Related to Clean Energy

The 2017 legislative session in Sacramento included several energy related bills that would have impacts on SJCE. Per the request of Councilmember Khamis; Attachment 5 (Summary of the 2017 Legislative Session Related to Clean Energy) summarizes these bills, the CalCCA Coalition position, the City of San José's actions, and the legislative result. Much of the activity of CalCCA and the City of San José focused on AB 726 and AB 813 that would have required Investor-Owned Utilities (IOUs) to sign new renewable energy contracts with costs of this procurement passed on to CCA customers. These Bills did not pass during the first year of the legislative session.

## EVALUATION AND FOLLOW-UP

Staff will bring forward for City Council consideration staffing plan update recommendations at the February 6, 2018 City Council meeting. To support the launch of Phase 1 and begin data testing, staff will follow-up with a recommendation to approve the Customer Service, Data & Billing Management Contract in February. In March, April, and May, staff expects to bring a number of additional items to the City Council for approval including: the Risk Management Policy, the Portfolio Management, Forecasting, and CAISO Scheduling and Settlements Services Contract, Power Supply Master Agreements, the Marketing Plan, and Customer Rates. Finally, staff will provide updates to the Transportation and Environment Committee.

The Clean Energy Community Advisory Commission (CECAC) is currently being established. The City Clerk's office will bring forward their recommendation of the 6 members of the CECAC and the 3 at large appointments from the Mayor's Office on January 23, 2018. The first Advisory Committee meeting will be scheduled for mid-February 2018.

## PUBLIC OUTREACH

This memorandum will be posted on the City's website for the January 30, 2018 City Council meeting.

## COORDINATION

This memorandum was coordinated with the City Manager's Office and the City Attorney's Office.

## COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

## FISCAL/POLICY ALIGNMENT

The recommended actions support the City's 2017 Green Vision (Goals 2 and 3) and the Envision San Jose 2040 General Plan (Goal MS-2 and Appendix 8: GHG Strategy)

## CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
LORI MITCHELL
Director of Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy, at (408) 535-4880. Or Leah Goldberg at 408-535-1901.

Attachments:

1. Schedule Overview
2. Staffing Plan Overview
3. Approved Organizational Chart
4. Proposed Organizational Chart
5. 2017 Status Update on Clean Energy Legislation

**Attachment 1 - Schedule Overview**

Although much has been accomplished to support the planning, formation, and development of SJCE, there remains a significant number of tasks to support its implementation and operation. Below is a summary of some of critical items that must be completed prior to launch and a plan of when we expect to complete key steps. ***It is important to understand that this plan may change as we formulate the new department, bring on key staff, and test the market for the required services to support operations.***

**January:**

- Submit a Surety Bond and registration package to the CPUC to become a load serving entity (LSE).
- Begin contract negotiations and finalize the Customer Service, Data & Billing Management contract.
- Issue an RFP for additional specialized technical consultants to support various operations of the department.
- Develop a Financial Plan with the Finance Department and their consulting team to establish credit worthiness with PG&E and to support the Phase 1 energy contracts. Establishing credit worthiness is required to execute the service agreement with PG&E.
- Execute the Service Agreement with PG&E.
- Update City Council on status of the program.
- Form Community Advisory Commission.
- Continue hiring key staff including the Staff Technician.
- Begin recruitment for Legal Analyst to coordinate regulatory compliance.

**February:**

- Submit for City Council approval execution of Customer Service, Data & Billing Management contract.
- Initiate the Test Electronic Data Exchange with PG&E. ***This must begin 6 months prior to the launch date.*** This work cannot begin until we have executed the service agreement with PG&E.
- Continued development of Energy Wholesale Services Contract to include: Portfolio Management, Forecasting, and CAISO Scheduling and Settlements.
- Finalize the Financial Plan to support the Execution of the Power Supply Agreements.
- Begin recruitment and hiring of Key Staff including: Deputy Director of Account Services, Marketing, and Public Affairs; Senior Analyst to support the Director with the Energy Wholesale Services Contract; and Division Manager for Administration and Finance Division. It is critical to hire these positions early in 2018 to ensure the department has adequate oversight of key operational contracts. The Deputy Director will oversee the Data and Billing Services Contract, develop the Marketing Plan, and manage Customer Enrollment. The Division Manager will oversee the development of the financial plan, customer rate development, and all administrative functions for the department.

**March:**

- Submit for City Council approval execution of Portfolio Management, Forecasting, and CAISO Scheduling and Settlements Services contracts.
- Develop Risk Management Policy.
- Submit for City Council approval Commercial Paper Program funding plan to support the execution of the Power Supply Agreements.
- Develop the Power Supply Master Agreements and RFP.
- On-Board Key Staff including: Deputy Director of Account Management, Marketing, and Public Affairs; Senior Analyst to support the Director with the Energy Wholesale Services Contract; the Division Manager for Administration and Finance; and Legal Analyst in the City Attorney's Office.
- Begin recruitment of the Deputy Director of Power Resources. This is critical to finalizing and overseeing the contract management of the power supply contracts.

**April:**

- Submit for City Council approval Risk Management Policy.
- Finalize Power Supply Master Agreements and issue the RFP.
- Obtain Power Supply bids.
- Develop initial Customer Rates based on supply bids.
- Interview and select Deputy Director of Power Resources. This is critical to overseeing the contract management of the power supply contracts.

**May:**

- Submit for City Council approval Power Supply Master Agreements and delegated authority of the Director to enter power supply confirmations subject to best and final offers and the constraints of Risk Management Policy.
- Finalize Customer Rates and Rate Comparison information.
- CAISO Registration and develop Scheduling Procedures.
- Develop Marketing Plan.

**June:**

- Submit for City Council approval execution of Power Supply Master Agreements.
- Submit for City Council approval initial set of Customer Rates. This requires execution of Power Supply Master Contracts.
- Finalize Marketing Plan.
- Establish process for collecting Generation Meter Data.
- Finalize Data Testing.
- Send Opt-Out Notice 1 (June 30, 2018), 60 days prior to enrollment, must include Rate Comparison.

**July:**

- Send Opt-Out Notice 2, 30 days prior to enrollment.

- Customer Outreach and Marketing Plan.
- Finalize Scheduling and Operating Procedures.
- Phase II & III Planning

**August/September:**

- Customer Outreach and Marketing Plan.
- Phase II & III Planning.
- **Launch Phase 1**

## Attachment 2 – Staffing Plan Overview

The Department's initial staffing plan was developed prior to the appointment of the Director. The need for some flexibility was anticipated, as was referenced in the Staffing Plan section of the memorandum to Mayor and City Council that was approved on August 29, 2017. Staff cautioned that, upon appointment of the Director, there was a possibility that new City classifications might need to be created or that the timing of hiring positions between fiscal years might need to be revised. After further review and analysis of the types of responsibilities to be overseen by each functional area and position as well as comparison of other Community Choice Aggregation (CCA) program structures in California, several changes are recommended.

These recommendations will re-structure the Department to have minimal staffing in each key functional area with the appropriate expertise to ensure success. Many of the approved classifications lacked appropriate management expertise and were heavily weighed around administrative marketing functions. This does not adequately serve the needs of the Department as many of the marketing administrative functions will be provided by an external service provider. The Department will need a workforce that is experienced in utility management and operations, power procurement, contracting, rates, and resolving complex problems related to the utility business.

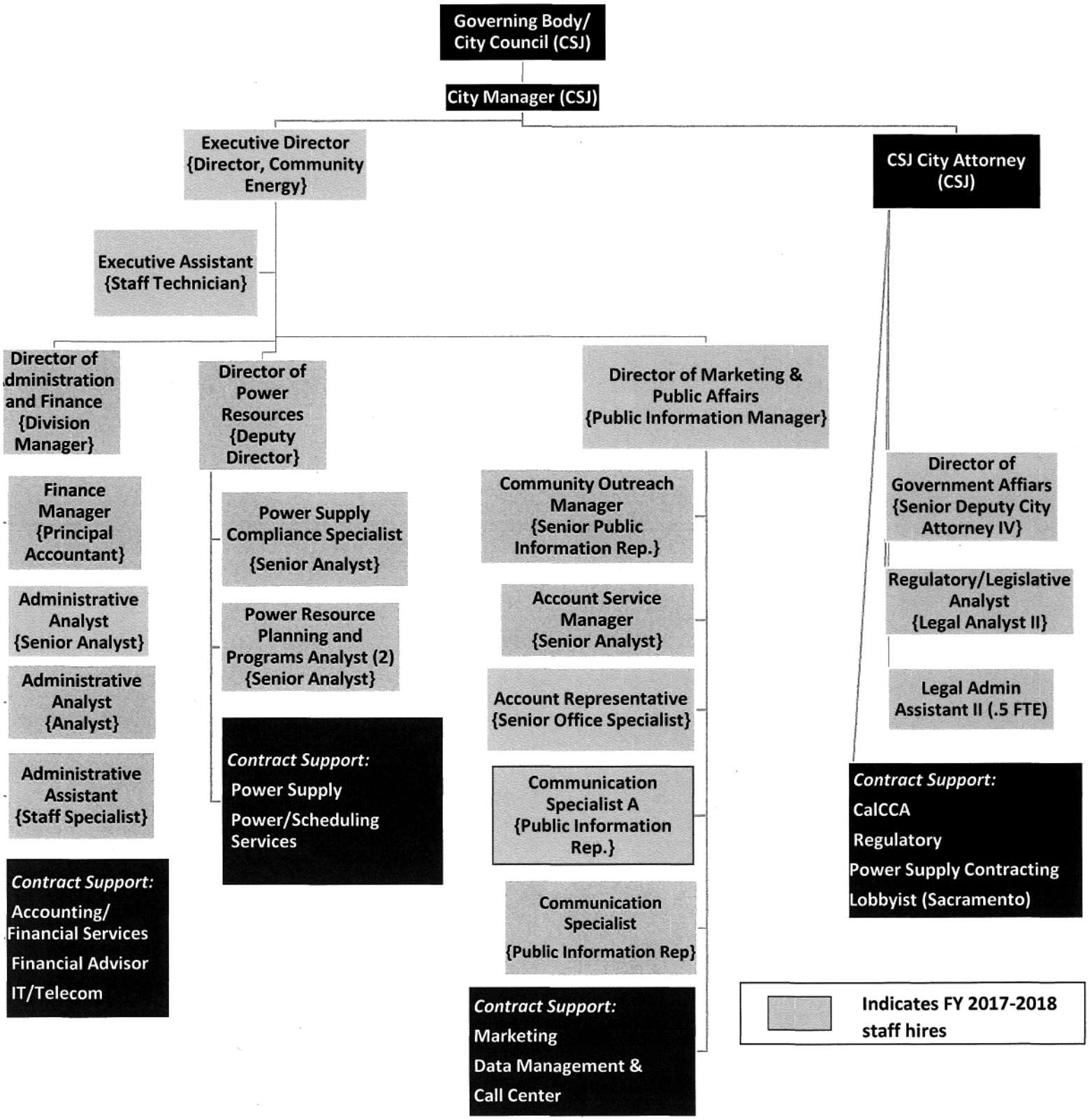
If these recommendations are approved, the total position count in 2017-2018 will increase from 8.0 to 11.5 FTE, while the total position count to be hired in 2018-2019 will decrease from 11.5 to 8.0 FTE. Overall, there will be no net change to position. In 2017-2018, as the result of salary savings during on-boarding, even with the proposed classification changes and the timing of hiring from the recruitment accelerations, the department will have sufficient savings to cover the additional costs in 2017-2018.

### Revised Staffing Plan

A comprehensive look at the revised staffing plan for the SJCE is shown in the table below.

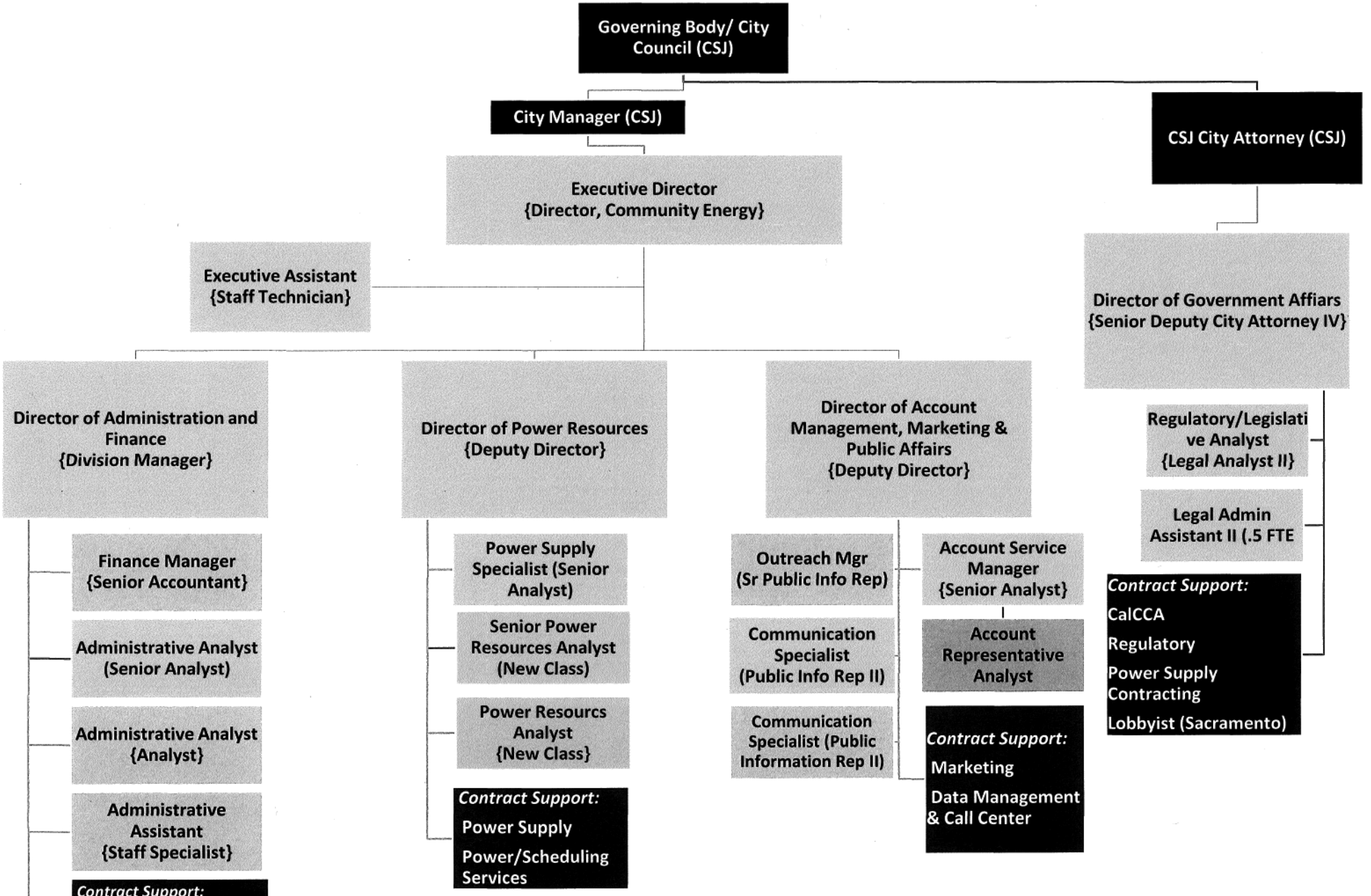
| SJCE Position | Initial Plan | | Revised Plan | |
|---|---|---|---|---|
| | FY 17-18 | FY 18-19 | FY 17-18 | FY 18-19 |
| Director, Community Energy (Executive Director) | X | | X | |
| **NEW** Deputy Director (Director of Account Management, Marketing, and Public Affairs) **replaces Public Information Manager** | X | | X | |
| Senior Analyst (Administrative Analyst) | X | | X | |
| Staff Technician (Executive Assistant/Council Clerk) | X | | X | |
| **NEW** Analyst (Account Representative) **replaces Senior Office Specialist** | X | | | X |
| Public Information Representative II (Communication Specialist A) | X | | X | |
| Senior Deputy City Attorney IV (Director of Government Affairs/Legal Counsel) | X | | X | |
| Legal Analyst II (Regulatory/Legislative Analyst) | X | | X | |
| Deputy Director (Director of Power Resources) | | X | X | |
| Division Manager (Director of Administration and Finance) | | X | X | |
| **NEW Senior Accountant (Finance Manager) replaces Principal Accountant** | | X | | X |
| Senior Analyst (Power Supply Compliance Specialist) | | X | X | |
| **NEW CLASSIFICATION TBD** (Power Resources) **replaces senior analyst** | | X | | X |
| **NEW CLASSIFICATION TBD** (Power Resources) **replaces senior analyst** | | X | | X |
| Staff Specialist (Administrative Assistant) | | X | | X |
| Senior Public Information Representative (Community Outreach Manager) | | X | | X |
| Senior Analyst (Account Service Manager) | | X | X | |
| Public Information Representative II (Communication Specialist) | | X | | X |
| Analyst (Administrative Analyst) | | X | | X |
| Legal Administrative Assistant II (0.5 FTE) | | X | | X |
| **Public Information Manager** | **X** | | **Deleted** | |
| **Senior Office Specialist** | **X** | | **Deleted** | |
| **Principal Accountant** | | **X** | **Deleted** | |

# Attachment 3 – Approved San José Clean Energy Organization Chart*




*Positions slated for hiring after FY 2017-2018 are listed with tentative classifications.

# Attachment 4 - Proposed San José Clean Energy Organization Chart*




*Positions slated for hiring after FY 2017-2018 are listed with tentative classifications.

**Indicates FY 2017-2018 staff hires**

**Attachment 5 - 2017 Status Update on Clean Energy Legislation**

| Bill Name | Author | Description | City of San José Position | CalCCA Coalition Position | Legislative Result |
|---|---|---|---|---|---|
| AB 726 – Energy<br><br>AB 813 – Electricity: Independent System Operator: California Renewables Portfolio Standard Program: procurement. | Holden | These bills would require Investor-Owned Utilities (IOUs) to sign new renewable energy contracts with costs passed on to CCA customers. | Oppose | Oppose<br><br>CalCCA submitted amendments that embodied these:<br>1. An ITC standard should apply equally to all electric corporations and CCA's.<br>2. CCAs should have the right to self-procure to meet new renewable procurement requirements. | Did Not pass |
| SB 618 – Load-serving entities: integrated resource plans | Bradford | This bill would require that the Integrated Resource Plans (IRP) filed by a load-serving entity be reviewed and approved by the California Public Utilities Commission (CPUC). | None | Neutral (previously oppose) | Bill is Law – signed by Governor |
| SB 100 – California Renewables Portfolio Standard Program: emissions of greenhouse gases | De León | This bill would revise the goal of the Renewable Portfolio Standards (RPS) program is to achieve 50% renewable resources by 2026, a 60% | Oppose | Oppose Amendments - CalCCA continues to support SB 100, but opposes Labor's proposed distribution grid amendment. | Did Not pass |

**Attachment 5 - 2017 Status Update on Clean Energy Legislation**

| | | | | | |
|---|---|---|---|---|---|
| | | target by 2030, and 100% by 2045. | | CalCCA's object to the proposal that the IOUs be given full control of the Distributed Energy Resources (DER) market.<br><br>The Amendment enshrines the IOUs' monopoly position by requiring IOU ownership for all distribution resources. This effectively shuts out competition, is unrelated to the intent of SB 100. | |
| AB 920 – Electricity: procurement plans: integrated resource plans | Aguiar-Curry | This bill would require the CPUC, when reviewing each load-serving entity's IRP to evaluate the mix of resources in the load-serving entity's total portfolio to ensure balanced portfolios. | None | Oppose unless amended | Did Not Pass |
| SB 356 – Energy data transparency | Skinner | This bill would require the CPUC, by January 15, 2019, to direct each electrical corporation to make available electronically to the public certain information, including, pricing data for | None | Unknown | Did Not Pass |

**Attachment 5 - 2017 Status Update on Clean Energy Legislation**

| | | | | | |
|---|---|---|---|---|---|
| | | electricity, on the electrical corporation's Internet Web site. The bill would require electrical corporations to provide pricing data electronically to the CPUC, as provided, within 3 months after a change in its rates. | | | |
| AB 79 – Electrical generation: greenhouse gas accounting | Levine | This bill would require, by January 1, 2019, the State Air Resources Board in consultation with the Independent System Operator (ISO), to update its methodology for the calculation of hourly emissions of greenhouse gases associated with electricity from unspecified sources. | None | Oppose | Vetoed by Governor |
| SB 338 – Integrated resource plan: peak demand. | Skinner | This bill would require the CPUC and the governing boards of local publicly owned electric utilities to consider, as a part of IRP process, the role of distributed energy resources (DER) and other energy efficiency measures to ensure that IRPs meet | None | Unknown | Bill is Law – signed by Governor |

| | | | | | |
|---|---|---|---|---|---|
| | | energy needs and consider options to reduce the need for new electricity generation and transmission in achieving the least cost to ratepayers. | | | |
| SB 366 – Electrical corporations: Green Tariff Shared Renewables Program | Leyva | The Green Tariff Shared Renewables Program requires an electrical corporation with 100,000 or more customers in California to file with the CPUC an application requesting approval of a tariff to implement a program enabling ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources. | None | Unknown | Did Not Pass |

EXHIBIT: SJCE #7
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 11.6.18 final memo-revised launch date
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 11.6.18 FINAL MEMO-REVISED LAUNCH DATE

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

**COUNCIL AGENDA:** 11/6/18
**FILE:** 18-1221
**ITEM:** 7.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Lori Mitchell
Margaret McCahan

**SUBJECT: SEE BELOW**

**DATE:** October 25, 2018

Approved D. DSyL Date 10/26/18

**SUBJECT: POWER PROCUREMENT, RATE SETTING AND POWER MIX FOR SAN JOSÉ CLEAN ENERGY**

## RECOMMENDATION

a. Approve San José Clean Energy's GreenSource base product that residential and commercial customers will be enrolled in 2019 to include a power mix of at least 80% GHG-free energy with at least 45% renewable energy and the TrueGreen product to include a power mix of 100% Renewable Energy.

b. Adopt a resolution authorizing the Director of Community Energy or her designee to negotiate and execute supply contracts for Calendar Year 2019 for Energy, Renewable Energy and Renewable Energy Credits ("RECs"), Resource Adequacy ("RA"), and Greenhouse Gas ("GHG") free power and attributes[1] using the Edison Electric Institute ("EEI") Agreement or the Western Systems Power Pool ("WSPP") Agreement and to transact for balancing energy and other necessary services from the California Independent System Operator ("CAISO") through the Northern California Power Authority ("NCPA"), increasing the authorization by $156,000,000 from $70,000,000 to an amount not to exceed $226,000,000 in aggregate through Calendar Year 2019.

c. Approve San José Clean Energy to set rates for the GreenSource product to be one percent below Pacific Gas and Electric Company's ("PG&E") generation rates, after accounting for the franchise fees and the Power Charge Indifference Adjustment ("PCIA") across all rate classes for 2019 and for TrueGreen to be 0.5-1 cent per kWh higher than San José Clean Energy's GreenSource base product.

[1] Power that is generated without producing GHG emissions.

d. Approve adjusting the launch for residential and commercial customers from March of 2019 to February of 2019. Approve delaying the enrollment of Phase II non-City small commercial and residential net energy metered (NEM) customers until SJCE has paid off debt, built at least 120 days of operating expenses in a financial reserve, and can cover the cost to serve these customers through rates that are lower than PG&E's rates.

e. Adopt the following Fiscal Year 2018-2019 Appropriation Ordinance and Funding Sources Resolution amendments in the San José Clean Energy Fund:

1. Decrease the Beginning Fund Balance – Operations and Maintenance Reserve by $500,000;
2. Increase the estimate for Fees, Rates, and Charges by $15,831,000;
3. Increase the Cost of Energy appropriation to the Community Energy Department in the amount of $9,954,000;
4. Increase the Community Energy Non-Personal/Equipment appropriation by $641,000;
5. Increase the Bonding and Security (CPUC) appropriation to the Community Energy Department by $50,000;
6. Rename the Pacific Gas & Electric Security Deposit appropriation to Pacific Gas & Electric Fees;
7. Decrease the Pacific Gas & Electric Fees appropriation by $1,000,000;
8. Establish the Debt Service – Interest – CP appropriation to the Community Energy Department in the amount of $460,000;
9. Increase the Ending Fund Balance – Operations and Maintenance Reserve in the amount of $6,734,000; and
10. Decrease the Unrestricted Ending Fund Balance by $1,508,000.

f. Approve the addition of a 1.0 Division Manager position (Regulatory and Legislative Policy) to the Community Energy Department.

## OUTCOME

Approving the recommended rates, power content, procurement authority, adjustment to launch strategy, and staffing adjustments will enable San José Clean Energy ("SJCE") to successfully launch Phase II to residential and commercial customers in February 2019 with clean electricity at rates that are lower than PG&E. The recommended budget actions will align the budget with the latest pro forma for this program.

## BACKGROUND

At the August 29, 2017 City Council meeting, the City Council approved the SJCE Implementation Plan discussing the funding strategy to obtain power supply contracts, established the SJCE Operating Fund, and approved the establishment of various revenue estimates and expenditure appropriations for City departments, including the Community Energy Department, to facilitate the initial operations of SJCE. On January 30, 2018, the City Council approved revisions to the launch schedules, reducing the number of launches from three to two. Phase I launch (city accounts) began September 1, 2018 and Phase II (residential and commercial accounts) was set to begin on March 1, 2019.

On February 27, 2018, the City Council approved the Professional Services Agreement for Data Management and Customer Call Center Services with Calpine Energy Solutions, LLC ("Calpine") for SJCE for a period of two years from the date of execution. On March 27, 2018, the City Council approved the Scheduling Coordinator, Portfolio Management, and Optimization Service Agreement with Northern California Power Authority. On May 1, 2018, the City Council approved the Risk Management Policy for the supply contracts entered into by the City.

On June 12, 2018, the City Council adopted a resolution authorizing the Director of Community Energy to negotiate and execute energy supply contracts for Phase I using the WSPP Agreement in an amount not to exceed $3.0 million in aggregate, approved initial electric generation rates for Phase I, and approved 2017-2018 budget adjustments to fund these energy supply contracts in the San José Clean Energy Fund. During the June 12, 2018 update to the City Council, staff noted that the next steps to successfully launch Phase II in March included the approval of energy supply contracts for Phase II (residential and commercial accounts).

On August 14, 2018, City Council authorized the Director of Community Energy or her designee to enter into RA contracts for November 2018 through December of 2019, using the WSPP and EEI agreements in an amount not to exceed $35.0 million, subject to approval of the Risk Oversight Committee for contracts over $1.0 million. Staff is in the process of procuring RA for November 2018 through December 2019. RA is a product that, by law, utilities, and Community Choice Aggregation ("CCA"s) must build or purchase to ensure there are sufficient generators available at all times to maintain in the reliability of the electric system.

On September 18, 2018, City Council authorized the Director of Community Energy or her designee to negotiate and execute contracts for Calendar Year 2019 for Renewable Energy, and RECs, to meet San José Clean Energy's minimum compliance obligations pursuant to the California Renewable Portfolio Standard ("RPS") using the EEI Agreement or the WSPP Agreement in an amount not to exceed $32.0 million in aggregate.

On September 25, 2018 Council approved a Revolving Credit Facility in the amount of $50 million with Barclays Bank that requires SJCE to maintain an Operating Reserve Account which shall at all times be maintained and segregated from all other funds and accounts of the City (Section 4.11 of the Agreement); from August 31, 2019 to November 15, 2019 maintain no less than $10.0 million in the Operating Reserve Account; from November 15, 2019 to December 31,

2019, maintain no less than $15.0 million in the Operating Reserve Account; and after December 2019 maintain $20.0 million in the Operating Reserve Account. (Section 5.15 of the Agreement).

## ANALYSIS

### Regulatory Changes to Power Charge Indifference Adjustment (PCIA) or Exit Fee

The California Public Utilities Commission ("CPUC") has been considering changes to the PCIA. On August 1, 2018, the assigned administrative law judge at the CPUC issued a proposed decision ("PD") that included a balance of measures that maintain the PCIA exit fee at reasonable levels while transitioning to a long-term solution intended to reduce costs for all customers, which will be designed during a second phase of the proceeding. On August 15, 2018, CPUC Commissioner Carla Peterman issued an alternate proposed decision ("APD") that significantly shifted the balance in the favor of the Investor Owned Utilities (e.g. Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric.) The APD increases the exit fees significantly for certain customers. It also removed key elements from the initial PD that ensured the necessary balance and stability while the CPUC completes the second phase of the proceeding. These changes include: (1) the removal of changes to rebalance how utility-owned generation costs are allocated consistent with State Law, and (2) the elimination of stabilizing measures like near term caps on exit fee increases. Despite extensive feedback from CCAs, elected officials, and community advocates, the CPUC voted unanimously to approve the APD on October 11, 2018.

The impact on each CCA program varies, however all CCA's agree implementing this decision will have serious impacts on all utility customers. The APD significantly hinders the City's ability to meet our local Climate Smart San José goals and the State's long term environmental policy goals in the short and medium term. The APD drives changes in CCA's business models that will prevent SJCE from achieving some of its objectives in the planned timeframe. Some of these objectives include: exceeding renewable portfolio targets, offering innovative customer programs to reduce greenhouse gas emissions, and investing in local development.

### Exit Fee Impacts

1. **Delayed enrollment for certain customers**

   The recently approved APD increases the PCIA in general; however, the fee significantly increased for the following types of customer accounts: small commercial, agriculture, residential net energy metered, standby, and streetlights. Staff recommends delaying the launch of service for at least one year to small commercial customers and residential net energy metered customers (customers who generate energy on premise, such as rooftop solar). SJCE cannot cover the cost of service for these customers due to the forecasted increase in the PCIA for 2019. The small commercial PCIA rate is estimated to increase by 75% over what it is today. These customer accounts represent approximately 20% of

the expected load. Staff recommends allowing voluntarily enrollment of these customer accounts sooner, if the customer elects to receive the 100% renewable product, TrueGreen. It is expected that SJCE can cover the cost to serve these customers under the TrueGreen rate.

In the short-term it is important for SJCE to successfully launch the program, pay off debt, and build an operating reserve to cover at least 120 days of expenses. Once SJCE has met these targets, SJCE may be able to offer service to these customers. SJCE will also work on lowering our generation costs by entering into less expensive long-term power purchase agreements for new renewable energy projects. SJCE has started evaluating these projects and will bring forward a recommendation to Council in 2019. These projects could come online in 2020 or 2021 and provide cost savings that will allow SJCE to enroll these customers and offer service to all customers in San Jose.

2. **Lower the GHG-free content of the portfolio for 2019**

The plan was to launch SJCE with a power supply mix consisting of 40% renewable and 100% carbon free. A necessary action to be fiscally prudent is to adjust the portfolio content of the base product (GreenSource) that customers will be enrolled into in 2019. **The GreenSource product will include 80% instead of 100% GHG-free energy with at least 45% renewable energy instead of 40%.** Based on current market projections and bid responses to date, staff projects that these adjustments will allow SJCE to provide this portfolio to customers with rates that are one percent less than PG&E's generation rates for San José's customers.

This power mix also compares favorably to PG&E's current power mix of 33% renewable and 78% carbon free. If approved SJCE's base product that customers will be enrolled in will have a renewable content that is still 12% more than PG&E and 2% higher GHG-free content than PG&E's portfolio. This portfolio composition moves San José substantially towards its aggressive goals of 100% GHG-free power in 2021 and 60% renewable power in 2030 while also retaining flexibility to lower power procurement costs given the significant regulatory change.

**Adjust Launch Date**

**Staff recommends launching service to both residential and commercial customers in February 2019, one month ahead of the planned launch in March 2019**. Adjusting the launch date will help SJCE pay for additional Resource Adequacy ("RA") costs that have recently been required by the CPUC. SJCE and CPUC staff have been in discussions for several months over a new 2019 requirement that SJCE purchase RA in January and February of 2019 for all the load served by SJCE in Phase II instead of just the Phase I load that SJCE had planned to serve. This new requirement will cost approximately $5.0 million dollars. Adjusting the launch of Phase II by one month will help offset these additional costs by increasing SJCE's revenue.

In preparation for the 2019 launch, staff have already begun community outreach events and will continue to employ an intense outreach program across a diverse media spectrum to ensure that customers are aware of this new launch date. SJCE is required by law to send out two notices that customers will be enrolled in SJCE. The law requires that SJCE send out four notices in total, two of the notices must go out in the two months before customers are enrolled and two notices must go out in the two months following enrollment. SJCE plans to send four monthly notices over the months of December 2018 through March 2019.

## Power Procurement Recommendation

Staff recommends proceeding with power procurement for SJCE to launch Phase II in February of 2019, provided that the total costs of energy through December 2019 do not exceed $226 million. Staff has issued several RFP's to purchase the Resource Adequacy and Renewable energy that was previously authorized and has executed some of the required supplies needed to serve customers in 2019. Staff utilizes utility best practices to procure power including analyzing forward market price indices to negotiate contracts. Participating in wholesale short-term power markets requires that SJCE is enabled and has the authorization to transact quickly to enter into fixed priced contracts.

SJCE intends to use the industry standard WSPP and EEI agreements to procure the power required for 2019. The standard payment terms in the WSPP and EEI agreements provide for monthly payment to suppliers by the 20$^{th}$ day of the month following service (subject to timely invoicing). Typically, SJCE will receive payment from its customers forty-five (45) days after the end of the service month. The Barclay's revolving credit agreement will provide a bridge in the early months of operating the Department to ensure timely payment for these supplies. Over time, the Department will work to build an operating reserve to cover these payments and enter into long-term power purchase agreements to bring costs down.

## Phase II Rates

Staff recommends setting the rates of the base product (GreenSource) into which customers will be enrolled, at a 1% discount to PG&E's generation rates. SJCE will lower rates to shield customers from the exit fee increase. When customers are enrolled by SJCE they will pay PG&E an exit fee; however, SJCE will absorb these increased costs for our customers by lowering SJCE's rates. Lowering SJCE's rates will allow SJCE to remain competitive with PG&E and offer a small discount to all residents and businesses served by SJCE when they are enrolled in 2019.

Staff also recommends offering a 100% Renewable Energy product called TrueGreen in which customers can choose to participate. Staff recommends setting rates for this product at 0.5 to 1 cent per kWh higher than the applicable GreenSource rate to cover the additional costs of procuring 100% renewable energy. Both the Commercial and Residential SJCE rates are detailed in Attachment 1.

Finally, staff recommends offering a program for Net Energy Metered ("NEM") customers who generate energy on premises. Residential NEM customers will be able to enroll on a voluntary basis beginning February 2019 if the customer elects to receive the 100% renewable energy product TrueGreen. The program features will incentivize customers to install on-site solar so that San José can advance the Climate Smart objectives of being the first 1GW solar City. Key NEM program features include:

- Credit roll-overs, from month to month; generation credits are applied at the retail rate against the electricity consumed each month;
- Monthly billing (as opposed to an annual electric generation bill, as in PG&E's NEM program);
- Annual cash-out; SJCE will issue customers a check every April for any surplus energy valued over $100 (if less than $100, credits roll-over)

Staff expects that customers will find the SJCE NEM program to be attractive relative to that offered by PG&E, both financially and from ease-of-use perspective.

**Staffing Adjustment**

The addition of one Division Manager position to the Community Energy Department is recommended to focus on regulatory and legislative affairs for the Department. The Department has faced several major regulatory and legislative issues over the last year including the PCIA (exit fee) issue described above as well as several energy bills that significantly impact SJCE. It is important that the Department has a highly skilled advocate to expertly engage in regulatory proceedings and advocate for the business interests of SJCE. It is also important to have a legislative policy expert to effectively engage with the legislature to ensure the interests of SJCE are represented. The CPUC expects to initiate Phase II of the PCIA proceeding before the end of 2018. It is expected that work related to Phase II will be ongoing throughout 2019. SJCE also expects significant engagement in the legislature on this issue and other energy related bills that may impact SJCE.

This position will provide energy policy expertise and effectively represent the City and the Department to the CPUC, California Energy Commission, California Independent System Operator, and the state legislature. This position will also collaborate with other staff in the Department, the City Manager's Office, Intergovernmental Relations, and the City Attorney's Office to evaluate the impacts of regulatory and legislative changes and communicate those impacts to stakeholders. This position will provide policy and bill analysis on various energy bills and regulatory proceedings. This work involves regulatory and bill analysis, assessing the business impacts for SJCE, engaging with stakeholders to build effective coalitions as well as convening and testifying on behalf of the Department.

## EVALUATION AND FOLLOW-UP

Staff will provide a summary of the power supply contracts executed for Phase II and update Council on the first four months of operating Phase I in January of 2019.

## PUBLIC OUTREACH

This memorandum will be posted on the City's website for the November 6, 2018 City Council meeting.

## COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

## COMMISSION RECOMMENDATION/INPUT

The Clean Energy Community Advisory Commission voted on September 24, 2018 to include the following language regarding their recommendations on rates and SJCE's portfolio content. This language was voted on before the PCIA decision on October 11, 2018.

The Clean Energy Community Advisory Commission recommends that San José Clean Energy set the default rate for customer enrollment at one percent below Pacific Gas and Electric Company's (PG&E) generation rates (net of Power Charge Indifference Adjustment and Franchise Fee) across all rate classes for 2019.

The Clean Energy Community Advisory Commission recommends that San José Clean Energy provide the following power mix: 95 percent greenhouse gas(GHG)-free energy, of which 45 percent is RPS eligible renewable energy and 5 percent unspecified energy, to the extent that it is financially feasible. If the Power Charge Indifference Adjustment regulatory outcome is not favorable or if the cost of these portfolio options is higher than expected, the Clean Energy Community Advisory Commission supports considering a reduction of RPS-eligible and GHG-free energy content to maintain a 1% discount relative to PG&E's generation rates.

The Clean Energy Community Advisory Commission recommends that SJCE also offer a 100% renewable product that customers can choose to enroll in that is 1 cent or less per kWh above the default product and lower than PG&E's 100% renewable product.

## FISCAL/POLICY ALIGNMENT

The recommended actions support the City's 2017 Green Vision (Goals 2 and 3), the Climate Smart Plan, and the Envision San Jose 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

## COST SUMMARY/IMPLICATIONS

While the SJCE program is impacted by the PCIA decision, it remains financially feasible. A revised pro forma shows the anticipated financial performance in FY18-19 and over the next three years as summarized in Attachment 2. This analysis shows that SJCE can pay off debt and build a reserve over time to total 120 days of operating expenses.

In this memorandum, several budget actions are recommended to align the 2018-2019 budget with the latest revenue and expenditure projections as summarized in the revised Source and Use Statement included as Attachment 3. The largest adjustments account for the revised energy sales revenue estimate and the cost of energy projection to implement the Phase II launch. Other adjustments revise the revenue and expenditure line items based on actual expenditures and revised estimates through the remainder of the fiscal year. This includes an increase to the Operations and Maintenance (O & M) Reserve to $20 million, which is the required reserve level to be maintained per the credit facility with Barclays Bank by December 2019. The establishment of the O & M Reserve at the $20 million level is required before any of the Commercial Paper used as start-up funding for the SJCE Program can be repaid. With the O & M Reserve increased to $20 million, an action is also recommended to establish a Debt Service – Interest – CP appropriation totaling $460,000 to cover the 2018-2019 interest costs associated with the Commercial Paper. It is anticipated that the Commercial Paper principal would be repaid in FY 2019-2020.

The following tables summarize the projected power supply costs through calendar year 2019 (fiscal year 2018-2019 and the first half of 2019-2020) of $226 million. An action is recommended as part of this memorandum to increase the Cost of Energy appropriation to ensure there is sufficient funding available to cover the 2018-2019 project cost of $82 million. Funding of $144 million for the first six months of 2019-2020 is subject to the appropriation of funds in 2019-2020.

| **Projected Power Supply Costs - Through Calendar Year 2019** | | | |
|---|---|---|---|
| | Previously Approved | **New Recommended Authorization** | Total Projected Cost |
| **Projected Power Supply Costs** | $70,000,000 | **$156,000,000** | $226,000,000 |

| **Projected Power Supply Costs by Fiscal Year** | |
|---|---|
| **2018-2019** | **$82,000,000** |
| **First 6 months of 2019-2020 (July 1, 2019 – December 31, 2019)** | **$144,000,000** |

The total 2018-2019 estimated position cost for the Division Manager for the remainder of the year is approximately $140,000. Estimated vacancy savings in 2018-2019 are sufficient to cover the additional cost for this new position. The 2019-2020 position cost is estimated at $210,000 and will be factored into the 2019-2020 Proposed Budget development.

## BUDGET REFERENCE

The table below identifies the funding source and the appropriation adjustments recommended in this memorandum.

| Fund | APPN | Appn. Name | Current Year Appn. | Rec. Budget Action | 2018-2019 Adopted Operating Budget Page | Last Budget Action (Date, Ord. No.) |
|---|---|---|---|---|---|---|
| 501 | R265 | Beginning Fund Balance – Operations and Maint. Reserve | $500,000 | ($500,000) | X-76 | 06/19/2018, Res. 78672 |
| 501 | R120 | Fees, Rates, and Charges | $98,785,000 | $15,831,000 | X-76 | 06/19/2018, Res. 78672 |
| 501 | 202V | Cost of Energy | $72,046,000 | $9,954,000 | X-76 | 10/16/2018, Ord. No. 30172 |
| 501 | 0782 | Community Energy Dept. Non-Personal /Equipment | $6,586,000 | $641,000 | X-76 | 06/19/2018, Ord. No. 30124 |
| 501 | 201P | Bonding and Security (CPUC) | $100,000 | $50,000 | X-76 | 06/19/2018, Ord. No. 30124 |
| 501 | 201Q | Pacific Gas & Electric Fees* | $2,000,000 | ($1,000,000) | X-76 | 06/19/2018, Ord. No. 30124 |
| 501 | 201R | Debt Service – Interest – CP | $0 | $460,000 | X-76 | 10/16/2018, Ord. No. 30172 |
| 501 | 8265 | Ending Fund Balance – Operations and Maintenance Reserve | $13,266,000 | $6,734,000 | X-76 | 10/16/2018, Ord. No. 30172 |
| 501 | 8999 | Unrestricted Ending Fund Balance | $3,938,943 | ($1,508,000) | X-76 | 10/16/2018, Ord. No. 30172 |

* Proposed renaming from Pacific Gas & Electric Security Deposit to Pacific Gas & Electric Fees.

## CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
LORI MITCHELL
Director, Community Energy

MARGARET MCCAHAN
Budget Director

## CERTIFICATION OF FUNDS

I hereby certify that there will be available for appropriation in the San Jose Clean Energy Operating Fund in the Fiscal Year 2018-2019, monies in excess of those heretofore appropriated there from, said excess being at least $15,331,000.

MARGARET MCCAHAN
Budget Director

For questions, please contact Lori Mitchell, Director of Community Energy Department, at (408) 535-4880.

Attachment 1 – San Jose Clean Energy Residential and Commercial Phase II Rates
Attachment 2 – Revised San Jose Clean Energy Pro forma Summary
Attachment 3 – San Jose Clean Energy Operating Fund Statement of Source and Use of Funds

EXHIBIT: SJCE #8
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Item 7.1 on November 6 2019 CC Agenda
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# ITEM 7.1 ON NOVEMBER 6, 2019, CC AGENDA

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# City Council Meeting

# Synopsis

## Tuesday, November 6, 2018

SAM LICCARDO, MAYOR
CHAPPIE JONES, DISTRICT 1
SERGIO JIMENEZ, DISTRICT 2
RAUL PERALEZ, DISTRICT 3
LAN DIEP, DISTRICT 4
MAGDALENA CARRASCO, VICE MAYOR, DISTRICT 5
DEV DAVIS, DISTRICT 6
TAM NGUYEN, DISTRICT 7
SYLVIA ARENAS, DISTRICT 8
DONALD ROCHA, DISTRICT 9
JOHNNY KHAMIS, DISTRICT 10

## 7. ENVIRONMENTAL & UTILITY SERVICES

**7.1 18-1488 Power Procurement, Rate Setting and Power Mix for San José Clean Energy.**

**Recommendation:** (a) Approve San José Clean Energy's GreenSource base product that residential and commercial customers will be enrolled in 2019 to include a power mix of at least 80% Greenhouse Gas free energy with at least 45% renewable energy and the TrueGreen product to include a power mix of 100% Renewable Energy.
**Approved.**
**(9-0-2. Absent: Carrasco, Rocha)**

(b) Adopt a resolution authorizing the Director of Community Energy or her designee to negotiate and execute supply contracts for Calendar Year 2019 for Energy, Renewable Energy and Renewable Energy Credits, Resource Adequacy, and Greenhouse Gas free power and attributes using the Edison Electric Institute Agreement or the Western Systems Power Pool Agreement and to transact for balancing energy and other necessary services from the California Independent System Operator through the Northern California Power Authority, increasing the authorization by $156,000,000 from $70,000,000 to an amount not to exceed $226,000,000 in aggregate through Calendar Year 2019.
**Resolution No. 78864 adopted.**

(c) Approve San José Clean Energy to set rates for the GreenSource product to be one percent below Pacific Gas and Electric Company's generation rates, after accounting for the franchise fees and the Power Charge Indifference Adjustment across all rate classes for 2019 and for TrueGreen to be 0.5-1 cent per kWh higher than San José Clean Energy's GreenSource base product.
**Approved.**

(d) Approve adjusting the launch for residential and commercial customers from March of 2019 to February of 2019. Approve delaying the enrollment of Phase II non-City small commercial and residential net energy metered customers until San José Clean Energy has paid off debt, built at least 120 days of operating expenses in a financial reserve, and can cover the cost to serve these customers through rates that are lower than Pacific Gas and Electric Company's rates.
**Approved.**

(e) Adopt the following Fiscal Year 2018-2019 Appropriation Ordinance and Funding Sources Resolutions amendments in the San José Clean Energy Fund:

(1) Decrease the Beginning Fund Balance - Operations and Maintenance Reserve by $500,000;

(2) Increase the estimate for Fees, Rates, and Charges by $15,831,000;

(3) Increase the Cost of Energy appropriation to the Community Energy Department in the amount of $9,954,000;

(4) Increase the Community Energy Non-Personal/Equipment appropriation by $641,000;

*(Item Continued on the Next Page)*

**7.1 18-1488 Power Procurement, Rate Setting and Power Mix for San José Clean (Cont'd).**

(5) Increase the Bonding and Security appropriation to the Community Energy Department by $50,000;

(6) Rename the Pacific Gas & Electric Security Deposit appropriation to Pacific Gas & Electric Fees;

(7) Decrease the Pacific Gas & Electric Fees appropriation by $1,000,000;

(8) Establish the Debt Service - Interest - CP appropriation to the Community Energy Department in the amount of $460,000;

(9) Increase the Ending Fund Balance - Operations and Maintenance Reserve in the amount of $6,734,000; and

(10) Decrease the Unrestricted Ending Fund Balance by $1,508,000.

(f) Approve the addition of a 1.0 Division Manager position (Regulatory and Legislative Policy) to the Community Energy Department.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

(Community Energy)

**Ordinance No. 30182 adopted.**
**Resolution No. 788265 adopted.**

## 8. PUBLIC SAFETY

**8.1 18-1490 Proposed Renaming of the Police Substation Located at 6087 Great Oaks Parkway to the Chaplain Dave Bridgen Southern Police Station.**

**Recommendation:** As recommended by the Public Safety, Finance, & Strategic Support Committee on October 18, 2018, approve the Police Department's request to rename the Police Substation (6087 Great Oaks Parkway) to the Chaplain Dave Bridgen Southern Police Station in honor of the late Police Chaplain Dave Bridgen.

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Police)

[Public Safety, Finance, & Strategic Support Committee referral 10/18/18 - Item (d)3]

**Approved as recommended.**
**(9-0-2. Absent: Carrasco, Peralez)**

## 9. REDEVELOPMENT – SUCCESSOR AGENCY

**9.1 18-1489 Actions Related to a Termination Agreement and Release with Integrated Device Technology.**

**Recommendation:** Approve a Termination Agreement and Release between the Successor Agency to the Redevelopment Agency of the City of San José and Integrated Device Technology whereby Integrated Device Technology would be paid a lump sum payment of $617,249.50 to terminate the agreements with the Successor Agency, thereby, saving the Successor Agency $264,535.50 over the life of such agreements.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

(Successor Agency)

**Approved.**
**(9-0-2. Absent: Carrasco, Peralez)**

EXHIBIT: SJCE #9
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Attachment- DRAFT 2018 RMR
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# ATTACHMENT- DRAFT 2018 RMR

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# ENERGY RISK MANAGEMENT REGULATIONS
## Version 1.0

Effective:
DATE

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## Objective of the Energy Risk Management Regulations

San Jose Clean Energy (SJCE) provides a variety of wholesale and retail energy services to customers within the service area. SJCE's goals regarding the provision of such services include, but are not limited to: (i) providing its customers with the lowest cost supply portfolio based on certain policies that may be adopted by the City Council from time to time (e.g., renewable energy policy goals), and (ii) maintaining reliable electric service to its customers. Inherent in these goals is the need to manage risks related to transacting in various Energy markets, and providing other wholesale Energy and transmission services on behalf its customers (e.g., resource optimization).

The purpose of these Energy Risk Management Regulations (Regulations) is to utilize the philosophies and objectives specified in the Energy Risk Management Policy, and document and describe the roles, strategies, controls, and authorities that will govern SJCE's comprehensive energy risk management program.

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# Part I: Energy Risk Management

## 1. Scope of Regulations and Procedures

### 1.1. Overview

The City Council will adopt an Energy Risk Management Policy (ERMP) which addresses risks faced by SJCE arising from SJCE's procurement activities on behalf of its customers in Energy and related markets. SJCE will develop two-pronged set of metrics that guide procurement decisions that include a rigorous analysis of net open position limits by month (discussed further in Appendix 9) and a cost-at-risk which may include but not limited to total portfolio cost at risk, rate at risk, and cost per wholesale MWh at risk. The ERMP provides for oversight by the Risk Oversight Committee (ROC) and mandates adoption of these Regulations by the ROC to address specific risk management issues. Controls, strategies, and processes for managing risks outlined in the ERMP are documented in these Regulations.

### 1.2. Applicability, Amendments and Updates

These Regulations are initially made effective upon the City Council's adoption of the ERMP, and shall subsequently be amended and/or restated from time to time by action of the ROC, when deemed necessary, by the ROC. The Director will report to City Council annually and summarize all changes.

## 2. Definitions of Risk

The term "risks," as used herein, refers specifically to those categories of risk which relate to SJCE's participation in wholesale Energy markets for the purchase and sale of Approved Products, as further described in these Regulations. These risks include, but are not limited to, volumetric, price, counterparty, regulatory and political, and operational risks.

### 2.1. Volumetric Risk

Volumetric risk is the risk that fluctuations in supply or demand will adversely affect net revenues. Thus, if actual load demands are higher than anticipated, and market prices have increased beyond expectations, the costs to serve such load will be greater than expected. Alternately, if load demands are less than expected, then surplus supply may be sold back into the market. If market prices have declined since the Energy was originally purchased, the ability to serve load at least cost may be impacted. For SJCE, demand variability is largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting SJCE service. This third portion of demand uncertainty is unique to CCA's and the risks associated with it need to be carefully considered. If supply availability is uncertain, such as when hydroelectric generation capacity is impacted by uncertain rainfall patterns, a resulting shortfall in generation may necessitate the

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purchase of alternative supply through the wholesale market when prices may be rising, which may also result in increased costs. Volumetric risk also covers the possibility of the unplanned loss of generation resources, transmission curtailments, and extreme weather events that can result in insufficient resources to meet load demands.

Volumetric risk is managed by maintaining financial reserves, diversifying the resource portfolio and developing a regular update of load and resource forecasts.

### 2.2. Price Risk

Price risk is the risk associated with changes in the market prices of Energy and Energy related products. Price risk is the possibility that the absolute price of a given Energy related product will fluctuate in an unfavorable manner, thereby exposing SJCE to potential cost increases or loss in value to its customers. SJCE will be exposed to price risk any time its fixed-price supply does not perfectly match demand. There are a number of ways that supply and demand may be mismatched. In its simplest form, demand may exceed supply, and any unhedged demand is exposed to changes in prices. With renewable supply, it is common that the production profile of the supply resource does not match the consumption profile of customers. Since hourly prices for electricity vary greatly within the day, this creates risk. This is referred to as "shape" risk. Another mismatch results from locational differences – an entity with generation in one region serving load in another region is exposed to price differences between the two regions. This is referred to as "basis" risk. These risks can manifest themselves over different time periods ranging from sub-hourly mismatches to long term mismatches.

Price risk is managed by closely monitoring and measuring the supply portfolio against estimated demand. The supply portfolio should be constructed to match resources against load obligations taking into account the various risks. Supply portfolios can benefit from resource and fuel source diversification, start dates, duration, pricing terms, types of products, geographic location, and by actively managing portfolios and assets.

**Example of Price Risk**

SJCE will focus on the price risk of its entire portfolio which is comprised of many individual transactions. When managing risk, SJCE will care about the impact of all of the transactions in the portfolio rather than a single transaction. That said, the portfolio is comprised of a series of individual transactions, and the examples below illustrate how the value of an individual transaction can be impacted by changes in prices.

For example, assume SJCE needs to buy 10,000 MWh of electric power for the last quarter of the coming year (October through December). On January 15th, the market price for that power was $28.90/MWh, for a total cost of $289,000. On March 15th, the market value was $39.00/MWh, or $390,000. If the budget was set as of the January 15th market price, but the product was not purchased until March 15th, then the cost would be $101,000 more than budgeted.

Price risk can be viewed as the possibility of a change in the MTM value of a transaction. To illustrate this definition, assume as above that the 10,000 MWh for October – December was purchased on March 15 for $390,000. If the price for that product drops to $25/MWh or $250,000 on September 15th, the MTM of the transaction is negative $140,000 as of September 15th.

### 2.3. Counterparty Credit Risk

Counterparty credit risk means risks which SJCE incurs as the result of transacting Approved Products with other entities. It must be understood that in the context of wholesale electric utility operations, both buyers and sellers may be exposed to counterparty credit risks. These risks are of five general types:

a. Transacting counterparties may fail to render payment for Energy related products delivered, or otherwise default under the terms of the transaction;
b. Transacting counterparties may fail to deliver Energy related products;
c. Transacting counterparties may fail to take delivery of Energy related products sold to them, necessitating a resale elsewhere (potentially at a loss) of the Energy related products;
d. Counterparties may refuse to extend credit to SJCE; and
e. A counterparty or its guarantor may seek bankruptcy protection.

Counterparty credit risk can be mitigated through counterparty diversification, credit risk premium, covenants, and insurance. Credit derivatives (credit default swaps) are not permitted.

### 2.4. Regulatory and Political Risk

Regulatory and political risks are the risks that regulatory agencies, courts and legislatures may take actions or adopt measures which:

a. Result in fines, assessments or other unrecoverable costs;
b. Make a transaction unlawful or adversely change the its economic benefit;
c. Adversely affect market prices or liquidity, leading to trading losses and stranded asset costs;
d. Impair the capability or willingness of SJCE's trading counterparties and wholesale suppliers to perform;
e. Prevent SJCE from performing to its own contractual obligations;
f. Interfere with operation of SJCE's generation or related assets; or
g. Negatively impact SJCE's ability to finance capital projects.

Regulatory and political risks are difficult to measure and manage. SJCE has an active legislative and regulatory strategy which monitors and influences the outcome of legislative and regulatory actions for the benefit of SJCE and its customers. The City of San Jose seeks a robust and active legislative advocacy function. A team of key City Department staff developed, reviewed, and updated

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legislative priorities which are consolidated under the City's Legislative Guiding Principles. This document provides a framework for directing the City's support, opposition, or sponsoring, or co-sponsoring of State and Federal legislation.

### 2.5. Operational Risk

Operational risk consists of the potential failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

a. An organizational structure that is ineffective in addressing risk (i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, no internal controls, incomplete and untimely reporting, failure to separate incompatible functions, etc.);
b. Absence, shortage or loss of key personnel;
c. Lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;
d. Inability to meet financial obligations incurred in the course of wholesale operations;
e. Exposure to litigation or sanctions as a result of violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
f. Errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

Operational risk can be managed by adequate oversight and the existence of and adherence to contracts, policies, regulations, and procedures. Operational risk is reduced by streamlined and well defined simple processes managed by skilled and competent staff with appropriate supporting physical and technological resources and appropriate oversight.

### 2.6. Market Risk

Market risk is manifested by the interdependencies of a market where the failure of a single entity or cluster of entities that may or may not be counterparties can cause a cascading failure which could affect an entire market.

### 2.7. Legal Risk

Legal risk arises when a counterparty is not capable of entering into, or has procedurally failed to obtain appropriate approvals to enter into, a contract. Legal risk is managed externally by ensuring counterparty representatives are authorized by the counterparty. Regarding long-term contracts, SJCE will manage legal risk by rigorously vetting and reviewing wholesale electricity contracts with appropriate legal and market experts.

### 2.8. Concentration Risk

Concentration risk denotes the overall spread of exposures over the number or variety of

counterparties. Concentration risk is calculated using the percentage of outstanding exposures each counterparty represents. Concentration risks may result from an uneven distribution of exposures to an individual counterparty, or an uneven distribution of exposures to particular sectors or regions.

Concentration Risk is managed pursuant to Section 18.3 of Part II of these Regulations which requires staff to document the business reasons for awarding Energy contracts to counterparties to whom SJCE has high concentrations of credit exposure.

### 2.9. Liquidity Risk

Liquidity risk is financial risk due to uncertain liquidity. Liquidity risk may include the risk of insufficient net cash flows on a short term basis, lack of access to credit facilities, the inability to liquidate an asset or position on short notice, and the risk of maintaining explicit liquidity reserves.

SJCE mitigates counterparty liquidity risk with regular, up-to-date credit evaluations; mitigates internal liquidity risks with adequate deposits from customers (if required); and mitigates asset liquidity risk by utilizing contractual instruments (e.g., approved enabling agreements).

### 2.10. Custodial Credit Risk

Custodial credit risk is the risk that, in the event of the failure of a custodial asset holder, an entity would not be able to recover the value of its deposits, investments or collateral securities that are in the possession of the custodian.

Custodial credit risk is mitigated by keeping deposits at FDIC insured institutions below insurance thresholds and actively monitoring the creditworthiness of the custodian.

### 2.11. Business Risk

Business risks are the risks inherent in SJCE's operations and environment that may impair its financial sustainability. These risks include the risks listed in this Section 2, in addition to the risks of creating and maintaining production and administrative facilities.

Business risks are mitigated by adequate planning and budgeting, training of staff and maintaining appropriate insurance coverage.

## 3. Risk Management Strategies

An important aspect of implementing an overall energy risk management program is the development of related strategies to mitigate all of the related risks associated with Energy product trading activities. The key strategies used by SJCE are outlined below.

### 3.1. Balanced Portfolio

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SJCE shall strive to maintain an integrated and balanced portfolio of resources to cover its customers' load serving obligations, and maintain the value of SJCE's assets, and manage resources within SJCE's financial requirements and within a dual volume and cost-at-risk framework, integral to SJCE's risk management strategy. The "cost at risk" will be designed to capture all of the volume mismatches, basis risk, shape risk, and other balancing risks associated with a given wholesale electricity contract.

## 3.2. Minimum Coverage Requirements

### 3.2.1. Minimum Coverage Requirements for Energy

SJCE shall strive to manage price and volatility risk by implementing a diversified procurement strategy that involves purchasing energy products to hedge costs for serving load. SJCE shall strive to purchase amounts of energy based on defined minimum coverage thresholds as set forth in the Time-Price Coverage Matrix (Recommended Coverages) of these Regulations. The Time-Price Coverage Matrix, along with the cost-at-risk metric will be used as a guide for SJCE's short term and long-term procurement strategies. The objective of the dual framework is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate SJCE's exposure to market price volatility and other pricing risk. The actual covered positions taken by SJCE, reflected as a percentage of forecasted load, may deviate from the recommended coverages contained in the dual framework based upon SJCE's staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

### 3.2.2. Minimum Coverage Requirements for Capacity

SJCE is required to acquire certain types and amounts of Resource Adequacy capacity, as further set forth in applicable requirements. Such rules, including the CPUC Decisions, establish minimum Resource Adequacy requirements in accordance with policies adopted by SJCE's respective Local Regulatory Authority. SJCE shall acquire the types and amounts of capacity required to comply with the Resource Adequacy requirements established by its respective Local Regulatory Authority.

## 3.3. Diversification of Portfolio

SJCE shall strive to develop an integrated resource portfolio that includes a minimum level of diversification in fuel type, contract duration, geographic location, counterparties, pricing terms, cash reserves and types of products.

## 3.4. Purchases to Cover Load Serving Obligations (No Speculation)

SJCE's primary objective for energy product procurement activities is to cover the load serving obligations of its customers. In the course of performing these activities, SJCE shall not engage in

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activities that expose SJCE to speculative trading risks, and shall only utilize approved products and transaction parameters as approved by the ROC, and defined in these Regulations.

### 3.5. Authority to Transact Approved Products

The type of Energy related products SJCE may transact will have a direct impact on the amount of risk SJCE assumes as a result of such activities. The types of Energy related products that SJCE is authorized to transact (herein after referred to as "Approved Products") are specifically identified in Appendix 6 of these Regulations.

## 4. Roles and Responsibility for Energy Risk Management

### 4.1. City Council

The Council has the ultimate oversight over SJCE operations and is responsible for establishing an organizational-wide framework for risk management and ensuring that risk management results are achieved as planned. The Council shall approve and establish organizational policies for risk management and delegate to the City Manager the responsibility for implementing the ERMP. With responsibility for the ultimate oversight over SJCE operations, the Council shall be responsible to insure the risk management results are achieved in accordance with the ERMP.

### 4.2. City Manager

The City Manager serves as the chief administrative officer of the City . The City Manager is responsible for administering City operations and staff, advising the City Council, managing the day-to-day delivery of public services, and implementing Council policies. The Council acknowledges that the City Manager shall establish the ROC and may delegate certain functions to the ROC, which delegation is ratified by the ERMP.

### 4.3. Director of Community Energy

The Director of Community Energy ("Director") has overall responsibility for implementing the ERMP and for communicating risk management issues to the City Manager and Council. The Director shall be responsible for delegating specific duties for carrying out the policy and insuring compliance with it by all affected SJCE employees or contractors.

**Risk Oversight Committee**

The Risk Oversight Committee (ROC) is responsible for overseeing compliance with risk management policies within SJCE. The ROC serves as the highest level of organizational risk management. The ROC shall consist of seven voting members: the City Manager, the Director of Community Energy, the Director of Finance, the City's Risk Manager, the Budget Director, the Community Energy Department's Deputy Director of Power Resources, and the Community Energy

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Department's Division Manager for Administration and Finance. The City Attorney will provide legal advice to the ROC. A quorum for the ROC to do business shall be not less than five ROC Committee members, or their designees.

Each ROC member shall have one vote, and shall appoint a voting alternate. All coorespondence shall be provided to the ROC members and alternates The ROC will meet at least quarterly, to act on the responsibilities mentioned above. Minutes to each meeting will be maintained per SJCE policy. The Director of Community Energy shall make annual reports to the Council regarding business transacted by the ROC.

The ROC shall have the responsibility for ensuring that business is conducted in accordance with the ERMP. The City Manager's ROC shall adopt and keep current "Energy Risk Management Regulations," which shall define in detail the internal controls, strategies, and processes for managing risks covered under the ERMP.

ROC responsibilities and delegated authorities are:

a. Establishing overall risk tolerances related to Approved Product transactions and counterparty credit risk;
b. Reviewing and approving Exception Reports to the ERMP and these Regulations;
c. Setting, changing and approving the design of all internal control processes related to energy risk management and Approved Product transactions;
d. Assessing the adequacy and functioning of the system of controls over volumetric, price and counterparty credit risks;
e. Reviewing all statistical modeling parameters, risk tolerances, risk factors and/or risk weights associated with all Approved Product transaction strategies;
f. Reviewing and recommending changes to ERMP policies, the types of Approved Product transactions and controls (e.g., limits, risk/performance methodology, etc.), including the addition of new products and instruments as described in these Regulations;
g. Recommending appropriate cash reserve levels to support SJCE's Approved Product transaction activities;
h. Reviewing the ERMP, and recommending any amendments to the City Council;
i. Reviewing and assessing the adequacy of the risk reports generated by the risk management function;
j. Ensuring that the results of risk management activities are reported to the City Council, and all risk management reports are provided to the City Council in accordance with Appendix 7 of these Regulations, or as necessary;
k. Reviewing and recommending appropriate transaction authority levels and delegation of authority to SJCE personnel, related to Approved Product transactions; and
l. Reviewing, recommending and approving changes to these Regulations, as needed.

Specific responsibilities of the ROC members and advisors are described in Appendix 2 of these Regulations.

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### 4.4. Front Office

The Front Office staff is responsible for the provision of wholesale energy services, which include, but are not limited to, planning and portfolio management, Approved Product transacting, contract origination, schedule coordination and real-time dispatch operations. The Front Office provides recommendations for load and resource balances, and portfolio optimization. These activities are conducted in order to meet the physical, financial and contractual requirements of SJCE. As part of these functions, the Front Office is responsible for transacting Approved Products on behalf of SJCE, in accordance with certain transactional limits, as further defined in these Regulations. All Approved Products that the Front Office is authorized to transact are identified in Appendix 6 of these Regulations. The Front Office is responsible for ensuring that the procedures and processes needed to transact business within the requirements and guidelines of the ERMP and these Regulations are fully implemented, and shall perform all duties related to actual transacting in the wholesale Energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. *The Deputy Director of Power Resources is responsible for managing the Front Office.* The Front Office may also utilize support from SJCE's Wholesale Energy Services Provider and consultants to carry out the duties described herein.

The Front Office is primarily responsible for:

a. Day-to-day purchases and sales of Approved Products for SJCE;
b. Developing transaction strategies that are consistent with SJCE's ERMP and established risk tolerances;
c. Ensuring infrastructure (hardware/software) is in place to support accurate and timely measurement and reporting of risk;
d. Ensuring that procedures and systems can effectively and efficiently support the Front Office activities;
e. Ensuring training is completed by Front Office staff, as required by CAISO, to comply with minimum participation requirements for participation in CAISO markets;
f. Conducting needs analysis for meeting load forecasts, optimizing the value of resources, and satisfying regulatory and/or compliance requirements;
g. Recommending transactions for authorization and approval;
h. Proposing modifications to commercial provisions of City Council approved contracts to the Director for consideration and approval;
i. Purchasing and/or selling Approved Products and services based on meeting the load forecast, optimizing the value of SJCE assets, and satisfying regulatory and/or compliance requirements;
j. Conducting sales transactions for surplus resources;
k. Nominating and managing CRRs in the annual and monthly allocation processes;
l. Preparing and submitting bids in the CRR annual and monthly auction processes;
m. Transacting Approved Products to satisfy applicable regulatory and compliance requirements (e.g., renewable Energy requirements, emission compliance obligations, etc.);
n. Development and maintenance of Renewable Energy Products tracking and allocation;
o. Competitively shopping and negotiating transactions in accordance with the ERMP;

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p. Generating trade confirmations (as needed);
q. Ensure transactions are recorded timely and accurately, and that valuation and risk measurement are performed according to approved methodologies;
r. Working with the Middle Office to develop and implement risk measurement methodologies and quantitative applications, where appropriate;
s. Identifying new products and markets that may add value to SJCE;
t. Prepare reports as outlined in Appendix 7 of these Regulation;
u. Initiate requests for new counterparty reviews; and
v. Prepare and maintain written Front Office procedures.

### 4.5. Middle Office

The duties of the Middle Office staff are conducted by SJCE's Administration and Finance Division. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting Approved Products and services. The Middle Office must be independent from the Front Office functions. *The Division Manager of Finance and Administrative Services is responsible for managing the Middle Office.* The Middle Office may also utilize support from SJCE's Wholesale Energy Services Provider and consultants to carry out the duties described herein.

The Middle Office is responsible for oversight, reporting and training; including:

a. Managing and overseeing risk, including reviewing controls and reviewing valuation and risk management methodologies;
b. Developing and implementing counterparty credit risk policies, procedures and limits in collaboration with the Finance Department and as approved by the ROC;
c. Reviewing and approving changes and provisions to enabling agreements (including all credit terms);
d. Monitoring SJCE's current and potential risk exposures and ensuring compliance with the ERMP and these Regulations;
e. Ensuring Middle Office training is completed;
f. Verifying that Approved Product transactions are authorized and executed based on the requirements of the ERMP and these Regulations, and are properly recorded in the deal capture systems;
g. Monitoring the effectiveness of the internal control structure, including the segregation of duties and independence of oversight;
h. Maintaining a list of individuals who are authorized to approve and execute Approved Product transactions;
i. Ensuring timely and accurate collection of market data for risk measurement and reporting;
j. Conducting necessary stress test on portfolio exposure and CVaR models;
k. Preparing, reviewing and distributing all risk management reports;
l. Processing and verifying market data provided by the Front Office;
m. Maintaining independent market forward price data;

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n. Evaluating performance of Approved Product procurement and hedging transactions relative to market indices and approved budget;
o. Notifying the ROC of credit limit exceptions;
p. Working with the Front Office to develop and implement risk measurement methodologies and quantitative applications;
q. Serving as secretary of the ROC, developing ROC agendas, taking and compiling meeting minutes, and distributing meeting materials;
r. Maintaining archives of risk management program documents;
s. Monitoring and ensuring compliance with the Commercial Compliance Policy;
t. Coordinating risk management education and training;
u. Various credit management duties as outlined in these Regulations; and
v. Prepare and maintain written Middle Office procedures.

### 4.6. Back Office

The Back Office staff is primarily responsible for settlement of invoices, verifying transactions, bookkeeping and accounting, and ensuring Approved Product transactional activities are consistent with contract authorities and requirements. The Back Office is responsible for providing assurance of accurate transaction records and settlements. *The Division Manager of SJCE's Finance and Administration Group is responsible for managing the Back Office.* The Back Office may also utilize support from SJCE's Wholesale Energy Services Provider and consultants to carry out the duties described herein.

The Back Office is responsible for the following duties:

a. Crosschecking counterparties confirmation documents for individual trade transactions to SJCE's own records of those transactions, and investigating and resolving exceptions;
b. Ensuring settlements are made timely and in accordance with contract terms;
c. Verifying and reporting compliance with procedures as reflected in the transaction tracking documentation;
d. Ensuring that operations and systems can effectively and efficiently support the processing of approved transactions;
e. Performing and supporting transaction allocations, invoicing and settlements;
f. Development and maintenance of GHG Compliance Instrument tracking and allocation;
g. Monitoring accounts receivable and payable;
h. Verification of transaction data entry; and
i. Preparing and maintaining written Back Office procedures.
j. Disputing any charges from the ISO.

### 4.7. Auxiliary Functions

Other functions in support of and relevant to risk management are conducted by SJCE staff who are not directly including within the Front Office, Middle Office and Back Office functions. These include some contract administration functions, load forecasting and managing financial reserves.

Long term planning and forecasting of Energy supply requirements (long term supply plans) are developed by SJCE staff and analytical support personnel.

SJCE's Finance and Administrative Services Division is responsible for preparation of the budget in collaboration with the City Managers Budget Office, and amounts billed for Approved Product transactions. SJCE's Finance and Administrative Services Division staff in collaboration with the Finance Department and the City Manager's Budget Office also establish necessary financial reserve levels related to counterparty credit requirements for SJCE in general. These auxiliary functions may also be supplied to SJCE by SJCE's Wholesale Energy Services Provider and other consultants.

## 5. Authorities, Limits and Prohibitions

### 5.1. Individual Trading Authority and Transaction Limits

All executed transactions shall conform to the policies set forth in the ERMP and these Regulations. It shall be the responsibility of the ROC, to establish appropriate individual trading authority limits for the various staff involved in the Front Office function. All Middle Office and Back Office staff are strictly prohibited from executing any Approved Product transactions. The Middle Office shall confirm that the Front Office has informed SJCE's counterparties of changes in Front Office staff authorized to trade within seven (7) business days. Unless or except as recommended by the ROC from time to time, trading authority limits for individual transactions shall be as outlined in Appendix 4 of these Regulations.

### 5.2. Permitted Transactions and Approved Products

The ROC is responsible for authorizing and approving all Approved Products that may be transacted by SJCE. Transacting Energy related products that are not authorized as Approved Products by the ROC is strictly prohibited, unless the ROC grants an exception in advance.

All transactions shall conform to the following general principles:

a. Be for an Approved Product;
b. Be duly authorized and within risk limits, and shall not cause either aggregate or individual counterparty credit limits to be exceeded;
c. Be executed with a counterparty with an approved credit limit;
d. Shall utilize contract terms intended to minimize the risk of loss if a counterparty fails to deliver, take delivery or pay for transactions provided;
e. Be executed and documented following standardized procedures; and
f. Be in compliance with applicable laws, regulations and court orders.

Approved Products that have been authorized by the ROC are listed in Appendix 6 of these Regulations. Appendix 6 also contains certain limitations for each authorized Approved Product.

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### 5.3. Unauthorized Transactions

Any member of staff who enters into an unauthorized transaction may be subject to disciplinary action up to and including termination of employment.

The following provides the minimum procedures for managing unauthorized transactions:

a. If a transaction is unauthorized, the Director shall determine the course of action. If the transaction involves market risk, the Director may elect to either enter into a risk neutralizing transaction, or attempt to unwind the transaction with the original counterparty. However, the first alternative (offsetting transaction) only offsets market price; operational and credit risk may still exist. Unwinding the transaction would likely remove all risk from the trade.
b. Once the corrective steps have been taken, the Director shall review the transaction to ensure all risks have been offset and report the results in the Exception Report.

### 5.4. Process for Adding New Approved Products

All requests to add a new Approved Product to Appendix 6 must be analyzed by the Front Office, Middle Office, Back Office staff, and SJCE's legal counsel to determine what risks such product may create for SJCE, and what business needs exist that provide the basis for adding the new product to the Approved Products list. All requests to add a new Approved Product to these Regulations must be presented to the ROC for consideration, and if approved by the ROC shall be added to Appendix 6 as an Approved Product. Any product not listed as an Approved Product in Appendix 6 of these Regulations is considered to be a new product.

A report to the ROC recommending approval of a new Approved Product shall address the issues described in the New Product Approval Checklist contained in Appendix 5 of these Regulations. The New Product Approval Checklist is a guideline for activities that should be performed in evaluating and mitigating the market and credit risks associated with use and deployment of new products.

Front Office staff have primary responsibility for developing the report to identify the business needs for the new Approved Product being requested, and an assessment of risks that SJCE may be exposed to by transacting the new Approved Product. Front Office staff are responsible for presenting the report to the ROC for consideration and approval. Primary responsibility may be delegated by Front Office staff to those individuals having special knowledge or expertise of the activity or new product type.

## 6. Systems, Tools and Training

SJCE employees (or supporting suppliers) who are authorized to perform energy risk management functions on behalf of SJCE shall be provided the necessary systems and tools to support all risk management processes, including:

a. Access in real time to market activity, prices and other data;
b. Systematically evaluating the financial condition, credit standing and ability to perform of other entities with whom SJCE does business;
c. Analyze the trends of supply, demand, market prices and costs of service;
d. Record transactions accurately and completely;
e. Measure key indicators and risk parameters; and
f. Generate complete and accurate management and financial reports.

Provision of funding shall be requested in the budgets submitted for the Department that performs market risk management functions on behalf of SJCE, for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools. Provision of funding shall also be requested in the budgets submitted for SJCE, which performs market risk management functions on behalf of SJCE for managers and staff to attend seminars and courses in risk management as required to comply with the ERMP and these Regulations.

## 7. Compliance Exceptions and Reporting

### 7.1. Compliance Exceptions

Compliance exceptions are actions which violate the provisions and/or requirements as set forth in the ERMP and these Regulations, and/or the procedures developed and approved by the ROC.

The following types of occurrences shall not be considered compliance exceptions:

a. Losses incurred on wholesale transactions which were undertaken in compliance with the ERMP and these Regulations;
b. Adverse changes in credit standing, financial condition or ability to perform of a wholesale trading counterparty which occur subsequent to the execution of a transaction or contract;
c. Adverse changes in capital asset valuations, MTM exposures, or CVaR resulting from fluctuations in prices subsequent to the execution of a transaction or contract; and
d. Actions compelled by order of regulatory authorities or by legislation, which are otherwise in violation of the ERMP, these Regulations, and/or related Procedures.

### 7.2. Exception Reporting

In the event a compliance exception occurs, the Director is responsible for notifying the ROC within 48 hours after it is identified and ensure that the Front Office prepare a report (Exception Report) for the ROC at its next meeting. The Report shall identify the issue or violation, and discuss the alternative remedial actions, document the action taken in response, and describe the steps that will be taken to prevent a reoccurrence of the event. A summary of all exceptions shall be reported annually to the City Council by the Director, unless the City Manager decides they should be reported more frequently.

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# 8. Risk Management Methodologies

## 8.1. Measurement of Risks

SJCE measures risk by estimating how high or low future supply costs and revenues could be, given a particular portfolio position and specific confidence level of market price movements. These estimates apprise management as to the risks inherent in a particular position and are used to make decisions to accept that risk or to reduce the risk by changing the position or the portfolio management strategy going forward.

Volumetric variability is estimated as part of the load and resource forecasting process. Normal, High and Low scenarios are provided as part of the annual budget process. An updated load and resource forecasted balance is provided each month. Volumetric uncertainty shall be incorporated in the quantitative risk measures that SJCE tracks and reports on a regular basis. The financial consequences of volumetric risk depend upon both how actual loads and supplies compare to forecasts, and on market price variations.

Market price risk is measured by calculating forward price volatility (either using recent historical data for forward prices or market prices for options), and applying that volatility to the future to see how costs and revenues could change if there were an adverse market price movement.

Counterparty credit risk measures are captured in reporting of counterparty exposure and transaction limits.

Appendix 8 of these Regulations provides a more detailed description of SJCE's risk measurement methodology. Risk management reports that are presented to management and the ROC are described in Appendix 7 of these Regulations. Each member of the ROC is responsible for raising significant issues that could impact SJCE or the City of San Jose more broadly. Each member of the ROC can call a special meeting to discuss significant issues.

# 9. Risk Limit Structure

SJCE sets risk limits in order to mitigate risk exposure within the broad objectives of optimizing the value of SJCE's assets, and serving customer loads at cost effective and stable prices. Transaction limits authorized in Appendix 4 shall comply with the requirements described in this Section 9.

Portfolio risk limits are expressed based on volume, duration, dollar value, and CVaR. SJCE will develop a path towards setting (1) volume limits and (2) VAR limits. Risk limits include: (1) qualification criteria for counterparties, including creditworthiness and required contractual provisions, (2) counterparty credit limits, and (3) preferred contractual terms. Counterparty credit risk limits are intended to monitor and contain potential losses due to counterparty default. This Section 9 also includes a brief discussion of risk monitoring and reporting requirements.

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Risk limits may be employed to indicate either:

a. An exception, which requires an Exception Report to the ROC;
b. A warning, which indicates that a risk measure is outside of an acceptable tolerance band, and should be reported to the ROC promptly; or
c. A standard, such as minimum qualifications or contract provisions.

Risk limits are subject to regular review and adjustment by the ROC as market conditions change. Risk limit metric methodologies and limits are further explained in Part II of these Regulations.

### 9.1. Basic Principles for Setting Risk Limits

The following set of basic principles shall guide the general approach to setting risk limits (including but not limited to credit exposure limits, contract duration, volume, and transaction limits):

a. Enable staff to conduct required business effectively
    1) Volume and dollar limits adequate to reliably meet physical and financial requirements at prevailing prices
b. Reflect the risk-reward tradeoffs consistent with SJCE's risk tolerance
    1) Duration, volume, dollar and exposure limits appropriate for associated risks
c. Favor strong counterparty attributes
    1) Creditworthiness and financial strength
    2) Favorable contractual terms
    3) Demonstrated performance
d. Promote fair and competitive transacting process
    1) Should not narrow field to a single supplier or unduly favor any supplier
e. Promote diversification
    1) Avoid too great a concentration of supply or exposure with any single supplier
f. Facilitate operational flexibility
    1) Allow for load uncertainty, resource uncertainty, and other contingencies
g. Facilitate conformance to the ERMP and Regulations
    1) Clear, measurable, consistent and enforceable
h. Balance burden of monitoring and enforcing limits with value
    1) Not so complex and cumbersome that it takes too many resources to manage

### 9.2. Portfolio Risk Limit Guidelines

Portfolio limits facilitate: (1) adhering to policies and procedures, (2) quantifying risk tolerance levels for risk monitoring, reporting and control, and (3) reducing operational risks.

Portfolio limits must take into account:

a. Load and resource balance variability – monthly and seasonal variation;
b. Load and resource balance uncertainty – confidence intervals around expected values;

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c. Minimum feasible wholesale transaction size – Approved Products are traded in large discrete package sizes; and
d. Operational flexibility and constraints – customer responsiveness, system reliability.

Risk limits shall be reviewed and updated by the Middle Office and Front Office in conjunction with development of the long-term power supply forecast, as part of the annual budget process, or more frequently as deemed necessary.

### 9.3. Net Position Guidelines

***Purpose***: Net position guidelines specify the physical load and resource balance tolerance levels within which SJCE staff shall recommend transactions to comply with these Regulations, and to ensure that Approved Products are transacted to meet physical and financial load and resource balance requirements.

***Applicability:*** Net position guidelines apply to Approved Product transactions that are one month in duration or longer. These transactions include all must-take, fixed-priced contracts, index-priced contracts[1], , and the long-term contracts. Fixed-priced Call Options are <u>not</u> approved products.

For all other transactions:

1. Within-the-month Approved Product transactions are operational in nature, and require flexibility to balance hourly, daily, and weekly, and balance-of-month load variations. Net Position Limits guidelines do not apply to within-the-month transactions, but they are included in transaction reporting and total deliveries reported to the ROC.

2. Resource Adequacy capacity, GHG Compliance Instruments, transmission, transportation, ancillary services, basis, and storage requirements are set by reliability based technical standards, regulatory requirements, or maximum potential usage in order to reliably meet real-time and peak demand. Net Position guidelines do not apply to these Approved Products, but staff shall inform the ROC of the criteria used for estimating SJCE's needs.

3. Transactions of surplus or excess Approved Products made available through existing contracts (e.g. due to weather conditions) shall not constitute Speculation, but shall be reported to the ROC.

The net changes in physical position due to buy-sell transactions executed to offset positions with a counterparty, effect transportation or transmission transactions, or other approved purpose shall be included in the Net Position guidelines.

[1] A transaction priced based on an index rate that is directly offset with a matching transaction priced at the same index rate (e.g., a sales transaction that is directly offset with a like purchase transaction) shall be excluded from the calculation of net position.



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## 10. Risk Control Structure

### 10.1. Control Principles

SJCE will strive to conduct its energy risk management activities in accordance with best practices of the wholesale electric industry, but implementing such practices must be justified and balanced as to their costs and benefits. Processes and control systems must be in place that allow SJCE to identify, measure, monitor, control and track its risk exposures. These processes and control systems shall be consistent with the following risk management control principles:

a. Appropriate segregation of duties and internal controls;
b. Appropriate systems to ensure accurate and effective management reporting;
c. Necessary resources in place to achieve management objectives;
d. Attract and retain skilled and trained personnel;
e. Cross-train and provide cross-coverage;
f. Employees conducting Energy transactions who are free of conflicts of interest;
g. Authority and approval delegation that is commensurate with accountability and capability;
h. Performance measurement and reporting incorporate risk and return measures; and
i. Ongoing monitoring of control effectiveness.

### 10.2. Functional Responsibilities

SJCE has integrated but segregated responsibilities to control risks in a manner consistent with the above control principles by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office. Oversight functions are performed at an operational level by these offices, and managed at an executive level by the City Council, City Manager, Director of Community Energy, and ROC. These functional responsibilities are described in detail in Section 4 of these Regulations. SJCE may utilize the services of its Wholesale Energy Services Provider and consultants for performing such functions.

### 10.3. Transaction Capture Process

All transactions[2] of Approved Products must be formally and officially documented by SJCE. Transaction capture procedures shall address all of the following elements:

a. Authorization/Approval (e.g., participant authorization form as used in the market purchase program agreement);
b. Competitive bidding;
c. Commitment to the transaction;
d. Recording the transaction;

[2] Transaction for a term of balance-of-month or shorter are not subject to certain elements of the transaction capture process, as further described in the respective transaction procedures.

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e. Confirming the validity of the transaction with the counterparty;
f. Inputting the transaction into the deal capture system;
g. Actual product delivery; and
h. Billing and settlement.

### 10.3.1. Authorization/Approval

The appropriate authorizations and approvals must be obtained by Front Office staff prior to transacting Approved Products. Such authorizations may be in the form of predefined contractual authorizations, or as defined in the ERMP or these Regulations. SJCE shall develop protocols to address when the volume and/or VAR limits are not in compliance. If the limits are violated by a certain to-be-determined amount SJCE shall assemble the ROC for an emergency meeting. The ROC can choose to be flexible on the limits (within certain parameters) or require action. If it exceeds a certain amount it goes higher in the organization and to SJCE's City Council. Front Office staff shall obtain approval from duly authorized personnel (supervisor or higher) with specified *dollar and volume* limits as specified in Appendices 3, 4 and 5 before consummating any transactions for Approved Products.

### 10.3.2. Competitive Bidding

For Approved Product transactions scheduled for delivery further than one (1) week in advance, quotes for forward commitments, with the exception of exchange traded transactions, must be obtained competitively from available and approved counterparties, consistent with the size and type of transaction and counterparty. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc. Front Office staff must obtain quotes from at least three (3) qualified suppliers, if three (3) approved counterparties are available. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc.

Transactions occurring for delivery of product within one week or less, or exchange traded (e.g. NYMEX, ISO, ICE, etc.) transactions, do not require formal written documentation that three (3) quotes were obtained beyond what is entered in the deal capture system.

### 10.3.3. Commitment to the Transaction

A commitment is a legally binding contract between SJCE and a counterparty. The Front Office must be the point of commitment for all Approved Product transactions. Final price commitments may only be made by authorized SJCE transacting personnel. Commitments shall be made verbally or electronically in the case of an electronic exchange. Transacting personnel shall only transact with counterparties who are listed on the Approved Counterparties List.

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### 10.3.4. Recording the Transaction

All transactions must be recorded.[3] Verbal commitments must be executed on a recorded telephone line, and shall be stored and maintained in accordance with SJCE's records retention policy. Electronic commitments must have an electronic audit trail. All transactions must be evidenced by a deal control system entry prepared in a timely manner. All transaction information shall be time and date stamped at the time of commitment.

### 10.3.5. Confirmation

A confirmation is a written document evidencing a verbal or electronic commitment made by SJCE transaction personnel. All confirmations must agree with the transacting person's commitments, as evidenced by phone records, deal capture system entries or other supporting documentation. All confirmations must be reviewed and confirmed by Back Office personnel for accuracy. The Front Office shall generate a written confirmation, when required, in any case where the counterparty does not provide or require a written confirmation. Any transaction that is not confirmed by the counterparty and approved by authorized personnel within five (5) business days after the transaction has been executed will be subjected to review and identification by the Middle Office. Using the confirmation, the Back Office staff shall review and confirm the consistency and accuracy of the deal capture system entry made by the Front Office staff. All written transaction confirmation shall be stored by SJCE consistent with SJCE's records retention policies. Written confirmations are not required for any transaction with a duration of less than seven (7) calendar days.

### 10.3.6. System Input

All transactions must be entered into the deal capture system, and the transaction information shall be maintained in accordance with SJCE's record retention policy. All transactions shall be entered into the deal capture system by Front Office personnel. Deal capture system input shall be performed no later than the first business day after the deal was confirmed. Once a transaction is entered into the deal capture system, Back Office staff shall review the deal entry to confirm that the information entered into the deal capture system is consistent with the transaction confirmation, if required. If the data entry is found to be correct by Back Office staff, the deal shall be approved for accuracy. If the data entry is found to be inconsistent with the deal confirmation, Back Office staff shall notify Front Office staff to make the necessary corrections to the data entry stored in the deal capture system.

### 10.3.7. Billing and Settlement

Back Office staff ensures that bills are issued to counterparties with outstanding accounts

[3] Real-time verbal and electronic commitment dates and times are recorded in the dispatch log. GHG Compliance Instruments are recorded in the CITTS system maintained by the California Air Resources Board.



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receivable, and reviews bills for transactions to verify that the bills match the terms of the contract and the amount of product actually delivered (this process is generally referred to as the “checkout process”).

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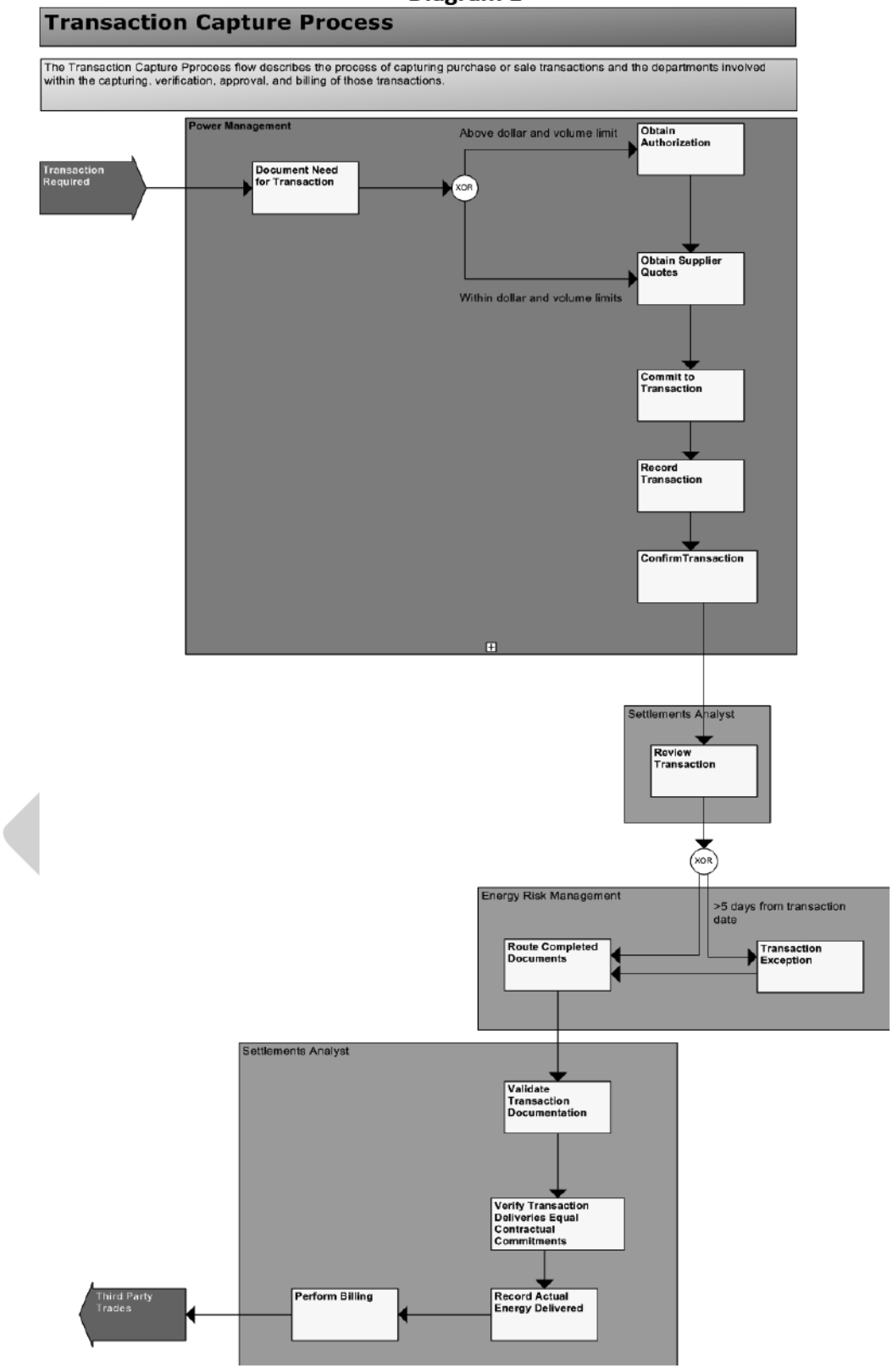
**Diagram 1 below is a representation of the transaction capture process:**

**Diagram 1**



### 10.4. Management Reporting Framework

The key to energy risk management is monitoring of risks. Accurate and timely information must be provided to all parties involved in any aspect of energy risk management, to allow them to perform their functions appropriately. Reports can be categorized into three main areas:

a. Risk Monitoring – illustrate risks that are faced ahead;
b. Oversight – show compliance with policies, authorities or risk limits; and
c. Performance – compares actual past and present performance of the portfolios to appropriate budget and market benchmarks.

A complete list of management reports for each level of oversight is provided in Appendix 7 of these Regulations. These reports shall be prepared on a frequency as indicated in Appendix 7. New reports, or changes to existing report formats, may be recommended and approved by the ROC.

### 10.5. Internal Controls

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations, provide information pertinent to management and facilitate attainment of business objectives.

The required controls shall include the following:

a. Segregation of duties between initiation, confirmation, monitoring and settlement transactions;
b. Delegation of authority that is commensurate with responsibility and capability;
c. Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation;
d. Meaningful summarization and accurate reporting of transactions and other activity at regular intervals;
e. Regular independent compliance review to ensure that the ERMP and these Regulations are adhered to; and
f. Active participation of senior management in the risk management process.

## 11. Conflict of Interest

In accordance with the California Political Reform Act, consultants shall cause each person performing services for the SJCE to complete annual conflict of interest filings and disclose investments as required by the FPPC and this Section.

All SJCE employees who are engaged in Approved Product transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the SJCE Conflict of

Interest Code are required to complete annual conflict of interest filings on FPPC Form 700, and disclose investments as required by that Code. They are required by that Code to abstain from participating in or attempting to influence any decisions that foreseeably would have a material financial effect on any such investment.

In addition to the foregoing disclosure requirement, SJCE employees engaged in Approved Product transactions, counterparty credit evaluation, or oversight of the foregoing are barred from direct investment in any company with whom SJCE has consummated any Approved Product transaction within the last two (2) years. Further, such employees must divest existing direct investments in Approved Product counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size ($2,000) to require disclosure on FPPC Form 700. As used in this section, a "direct" investment means an investment which, if of sufficient size, is of a nature that would constitute an "investment" pursuant to the California Political Reform Act.

SJCE employees supervising staff who are subject to this policy are responsible for routinely reviewing the most recent Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. Updated copies of Form 700 shall be given to the supervisor/manager by the SJCE Conflict of Interest Filing Officer designated in the SJCE Conflict of Interest Code. The SJCE legal counsel will assist in reviewing these forms and providing legal advice in connection with such reviews on request.[4] In accordance with the California Political Reform Act, consultants shall cause each person performing services for the SJCE to complete annual conflict of interest filings and disclose investments as required by the FPPC and this Section/Paragraph

## 12. Policy Review

Prudence is required in implementing any and all policies and procedures. Market and industry conditions, technology and risk tolerances tend to change over time. Therefore, the ERMP and these Regulations should be reviewed annually, or as necessary, in order to make adjustments in response to changes in business objectives and/or industry conditions. All recommended amendments to the ERMP are to be reviewed by the ROC and presented to the City Council for final review and approval. Changes to these Regulations shall be reviewed and approved by the ROC.

[4] Non-staff ROC members, if any, shall not be subject to the requirements of Section 11 since their oversight functions are generally not transactional and company specific. Non-staff ROC members may be subject to conflict of interest compliance requirements at each of their own organizations.

# Part II: Counterparty Risk Management

## 13. Organizational Philosophy Toward Counterparty Risk

### 13.1. Objective and General Risk Policy

SJCE's wholesale energy market activities are directed toward the goal of providing Energy, capacity, transmission and related services to its customers at the lowest possible cost consistent with an acceptable level of risk. SJCE fulfills its supply obligations by contracting with counterparties for the purchase or sale of such assets on a long-term or short-term basis. Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with Approved Product transactions in the Energy wholesale markets. The objective of the wholesale counterparty risk policy is to preserve SJCE's capital, liquidity and supply reliability by limiting counterparty credit risk and counterparty concentration to acceptable levels.

### 13.2. Expectations of the City Council

Analytical procedures for granting open lines of credit and managing counterparty exposures are required. However, SJCE recognizes that the models used in managing credit risk are not predictive; they are explanatory. Credit risk management models cannot predict individual credit events or collective credit events. The Finance and Administrative Services Division is expected to manage counterparty risks to acceptable levels established by the ROC and approved by the City Council. The City Council recognizes that SJCE is generally a net buyer of Energy. Exposure to wholesale counterparty credit risk will normally be greater in periods of rising market prices due to higher replacement costs in a rising market. On the other hand, in high hydrological conditions, where excess generation may be available for sale on the wholesale market, SJCE is exposed to greater counterparty credit risk if counterparties fail to take delivery, or if they fail to pay for power delivered.

## 14. Counterparty Risk Definitions

### 14.1. Counterparty Risk

Counterparty risk is defined as the exposure to economic loss resulting from default by another party to a contract. Such risk exists in all financial and commodity markets and can be distinguished from other financial risks such as market risk, operational risk and regulatory risk.

Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. Contractual payments can result from purchases or sales. Under a sale, the counterparty owes cash and a receivable is created. The holder of the receivable is at risk of financial loss if the receivable is ultimately uncollectible. Under a purchase, the counterparty is

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obligated to deliver a product. However, the counterparty may also be required to reimburse the purchasing party for financial loss in the event of delivery failure. Therefore, the purchasing party is at risk of financial loss if the counterparty is unwilling or unable to reimburse for financial losses.

The ERMP states that for all fixed price Approved Product transactions, the counterparty must possess a public credit rating of at least a BBB+ (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). SJCE staff may consider counterparties with a rating below investment grade or counterparties with no NRSRO rating on a case-by-case basis with the approval of the ROC. If ratings differ between NRSRO's, the lowest available rating will be used for underwriting purposes.

### 14.2. Credit Risk

For the purchaser of an Energy related product, credit risk is defined as the difference between the contracted price and current market price of a contracted product. If the current market price is greater than the contracted price, a positive MTM exists, thus exposing the purchaser to credit risk in the event of supplier default.

If the current market price is less than the contracted price, a negative MTM exists. The purchaser has credit exposure with a negative MTM if the deal is subject to termination or MTM damages. There is no credit exposure with negative MTM if the deal is subject to one-way liquidating damages and the purchaser is not the defaulting party.

If the seller has a positive MTM position in a transaction, the seller is exposed to profit risk in the event the counterparty defaults, where the seller would lose its opportunity to above market revenue. In contrast, if the seller has a negative MTM position in a transaction, the seller is exposed to liquidity risk and may be subject to margin calls if the MTM exceeds established credit limits.

## 15. Underwriting Standards

All transacting counterparties shall be reviewed for creditworthiness. This review shall include:

a. A search of public debt and implied unsecured credit ratings as published by a NRSRO such as Standard & Poor's, Moody's Investor Services and Fitch;
b. Review of at least the two (2) most recent years audited financial statements receiving an unqualified opinion from a certified public accounting firm; and
c. Other information, as available, from news services, trade publications, financial websites, etc.

For transacting counterparties without NRSRO ratings, SJCE credit staff shall determine an implied rating according to SJCE's internally-developed methodology and rating scale. Transacting for all counterparties shall require an implied "investment grade" rating of BBB+ or its equivalent, at a minimum. SJCE credit staff may consider counterparties with a rating below BBB+ or its equivalent on a case-by-case basis. All sub-investment grade rated counterparties require ROC approval before

transacting and may require credit assurances or other consideration.

## 16. Credit Risk Measurement

Credit risk exposure should be measured as: (1) current exposure, and (2) potential exposure. Current credit risk exposure to a single counterparty is defined as the sum of: (1) the dollar value of all amounts invoiced and unpaid, and (2) the dollar amount of all uninvoiced deliveries. Potential credit exposure is the MTM value of all forward contracts from today forward, as reported by the business unit.

Total credit risk exposure is the sum of the variables shown in the formula below, less all offsetting amounts that are supported by legally binding netting agreements or available collateral. SJCE's credit exposure measurement is defined by the following formula:

*Credit Exposure = Current and Prior Month Sales (Net Sales[5]) + MTM – Credit Enhancements*

In addition, potential credit risk exposure is captured by the CVaR statistic. The CVaR statistic represents the maximum dollar loss at a 95% confidence level within a certain time, due to volatility in market prices if the counterparty defaults. CVaR is a dollar estimate of the risk that potential changes in market price would result in increased credit exposure for all forward contracts. CVaR shall be presented as supplementary information for credit benchmarking. SJCE's CVaR calculation methodologies are documented in Appendix 8 of these Regulations.

## 17. Credit Enhancements

Customers or counterparties that do not meet the minimum requirements for an extension of an open line of credit, as set forth in Section 15 of these Regulations, must post at least one (1) of the following types of security prior to the execution of transactions:

### 17.1. Guarantees and Surety Bonds

Counterparties may provide a guarantee from a third party, or parties, which meets the creditworthiness requirements set forth in Section 15 of these Regulations. If a counterparty provides a guarantee, the amount of any open line of credit will be determined through an analysis of the financial strength of the guarantor. The guarantor will be considered secondarily liable for the obligations of the counterparty. In the event a surety bond is provided, SJCE will consider the surety bond as primarily liable for the obligations of the counterparty. All guarantees must be approved as to content and form by SJCE's legal counsel.

Preferred terms for guarantees include, but are not limited to:

a. A statement that the guarantee is one of payment and not of collection;
b. A statement that the guarantor agrees to pay the guaranteed obligations on the date due;

[5] Provided there is a netting agreement with the counterparty. Otherwise, it will be the receivable portion only.

c. A statement that the guarantor's obligations under the guarantee rank pari passu with its senior unsecured debt obligations;
d. A statement restricting the guarantor's right to terminate the guarantee, and any termination must still guarantee existing exposures as they may exist;
e. A statement that the guaranteed obligations are unconditional, irrespective of value, genuineness, validity, waiver, release, alteration, amendment, and enforceability of the guaranteed obligations, and a statement that the guarantor waives the right of set-off, counterclaim, etc.;
f. A statement that the guarantee reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of the primary obligor's bankruptcy or insolvency;
g. A statement that the guarantor waives its right to subrogation until the guaranteed obligations are paid in full;
h. A statement that the guarantee is binding on successors of the guarantor and a statement that SJCE is a beneficiary of the guarantee;
i. A statement that the guarantee will be interpreted under either New York or California law; and
j. A statement that the guarantor has subjected itself to jurisdiction and service of process in the jurisdiction in which the guarantee is to be performed (i.e., State of California).

Exceptions to the above concepts and/or acceptance of guarantees from entities domiciled outside the U.S. or Canada require ROC approval.

### 17.2. Letter of Credit

Counterparties may provide an irrevocable Letter of Credit in an amount sufficient to cover the amount in excess of the credit limit approved by SJCE at the date the transactions are entered into (e.g., MTM in excess of credit limit). Letters of Credit must have a term of at least 45 days past the term of the transactions. Letters of Credit must be issued by a domestic bank (or domestic branch of a foreign bank) that has a senior debt rating of at least "A" or its equivalent from a NRSRO. Approved Banks should be monitored for any potential Letter of Credit concentration between SJCE and various counterparties.

Exposure to any single institution will be limited to 20% of SJCE's total credit exposure, unless exposure is derived from a few transactions whereby demanding Letter of Credits from several institutions would be unreasonable for the counterparty. If credit risk exposure is derived over the entire portfolio of transactions, the 20% rule will apply. Any exposures greater than 20% must be approved by the ROC. All Letters of Credit must be approved as to content and form by SJCE's legal counsel.

### 17.3. Prepayments

Counterparties may provide a prepayment or cash margin deposit in an amount that is sufficient to cover the related transactions. Discounts for prepayment, consistent with industry standards, may be applied to the sum owed as authorized by the Director of Finance.

## 18. Quality Assessment

### 18.1. Counterparty and Credit Analysis

Middle Office staff are responsible for ensuring a standardized credit screening process for all counterparties. All counterparties must be reviewed for financial creditworthiness according to these guidelines.

Middle Office staff will submit a credit review report to the appropriate approval authority, depending on the level of credit requested, for consideration and action. For agency-rated counterparties, Middle Office staff may elect a rating similar to one derived by a NRSRO, and waive initial review requirements, if the counterparty is recognized and established in the industry. As a result, a more stringent review process should be followed for those entities that do not possess a NRSRO rating and/or have marginal financial capacity.

All counterparty credit lines and credit reviews will be submitted to the appropriate authority level as authorized in Section 19 of these Regulations. ROC actions can result in the approval or rejection of a proposed counterparty, or in an amendment to credit limits approved under delegated approval authorities. Approved counterparties will be grouped into three tiers. A counterparty's tier status will be based on the credit evaluation matrix found in Table 1. More frequent monitoring may be required if a counterparty is subject to the possibility of a credit event (e.g., if their credit rating falls one full letter grade or greater, or if their credit rating falls below investment grade), or if industry factors dictate.

**Table 1**
**Credit Evaluation Matrix**

| | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| Criteria | Bilateral master agreement or transactions of one (1) month or longer within past two (2) years | No greater than prompt month transactions within past two (2) years | No transactions in past two (2) years |
| Type of Trading | All | Prompt month or less | Day-ahead (Prescheduling time frame)/Real-time |
| Credit Evaluation Requirement | At least annually | At least biennially, or as needed | None |

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| | | | |
|---|---|---|---|
| External credit and EDF ratings checked | For RFPs and at least annually | Annually | Annually |
| Credit Limit | See Section 19 | $500,000 | $100,000 |
| Event Monitoring | On-going | On-going | On-going |

### 18.2. Credit Limits

Once a counterparty has been determined to be creditworthy, a credit limit will be proposed. An open line of credit may be extended up to the lesser of 5% of the counterparty's adjusted tangible net worth[6] or SJCE's maximum counterparty credit limits. In the case of municipal or public organizations, an open line of credit may be extended up to 10% of average free cash flow[7] for the prior two (2) years not to exceed SJCE's maximum counterparty credit limits.

| NRSRO/SJCE Internal Rating | Maximum Counterparty Credit Limits |
|---|---|
| AA- and above | $ 35 million |
| A+ to A- | $ 25 million |
| BBB+ | $ 15 million |

For example, if a municipal counterparty qualifies for a credit limit of $20,000,000 based on the cash flow test (e.g., 10% of avg. free cash flow for past two (2) years), but only qualifies for an SJCE rating of BBB+, then the maximum policy limit allowed would be $15,000,000.

Although a counterparty may qualify for a certain maximum credit limit, anticipated transaction volumes and other business factors may prompt the selection of a lower limit that is considered more appropriate. As a result, the credit limit methodology provides limit ceilings while allowing flexibility in response to normal business activities.

### 18.3. Concentration Limits

In addition to maintaining credit limits, SJCE staff shall strive to diversify transactions among counterparties. SJCE staff shall document the business reasons (e.g. differences in bid price, lack of other qualified suppliers, etc.) for awarding contracts to counterparties with high concentrations of credit exposure.

[6] Tangible Net Worth (TNW) = shareholder equity – goodwill – intangible assets – receivables from officers – investments in other trading companies – off-balance sheet liabilities, etc.

[7] Free Cash Flow = net income + non-cash charges such as depreciation + or - changes in accounts receivable, inventory, prepaid expenses, accounts payable, and accrued liabilities – cash dividends (general fund transfer) + net borrowing – capital expenditure.

## 19. Approval Authorities

### 19.1. Credit Authorization

Approval authorities are based on the level of business experienced by SJCE on a historical and current basis within limits allowed under the Regulations. Authority to establish credit limits is segregated as follows:

| | |
|---|---|
| Director of Community Energy or designee:<br>(designee cannot be staff in the Power Resources group) | Up to $ 15Million |
| Director of Finance or designee: | Up to $ 20 Million |
| ROC: | Up to $ 50 Million |
| City Council: | $ 50 Million + |

The maximum amount of any open line of credit to be extended to any customer or counterparty shall not exceed $50 million unless authorized by the ROC. If credit lines exceeding $50 million are anticipated, approval by the City Council is required.

### 19.2. Increases to Wholesale Counterparty Limits

Any increase to an existing open line of credit must have the written approval of SJCE's Division Manager of Administration and Finance Group , the Director of Finance, or the ROC, within the authorized limits stated in Section 19.1. A sign off sheet shall be used to ensure written approval according to the limits authorized by this Regulations.

### 19.3. Credit Review Exceptions

Wholesale counterparties not subject to the above credit review criteria include those associated with day-ahead and current day purchases where risk associated with market movements is minimal. Sales transactions within the day-ahead and current day can be consummated with a counterparty that has not been assigned a pre-approved credit limit if the counterparty maintains at least a BBB+ rating from an NRSRO. Such transactions may not exceed $250,000 per counterparty.

If a counterparty or guarantor does not maintain any NRSRO rating, and if a counterparty credit review has not been performed in the past 24 months, a policy limit of $100,000 in aggregate net receivables per counterparty may be authorized, with the approval of the Director of Finance or a designated alternate until a formal review can be completed. These individual non-rated counterparty limits are subject to a total net receivable portfolio limit not to exceed $1,000,000, in aggregate.

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## 20. Wholesale Credit / Counterparty Management

### 20.1. Monitoring and Reporting Exposures

Middle Office staff are responsible for monitoring and reporting on the risk management program. A list of reports, which document trade positions, risk exposure, authorization and policy compliance, may be found in Appendix 7 of these Regulations. The credit exposure for each customer or counterparty described in these Regulations may be monitored according to concentration in the following areas: credit rating, counterparty, region, contract type, contract term and MTM exposure.

Middle Office staff are also responsible for communicating this information to management under the timelines outlined in Appendix 7 of these Regulations, and for establishing a violation reporting process to document exceptions to the ERMP or these Regulations. Exception Reports will document the nature of exception, and the actions taken to correct exceptions.

The credit risk reporting system should be integrated with the transaction processing system. This is generally an extension of the concept that credit risk assessment and reporting should be supported by the normal transaction processing system. The credit system, should be integrated with the deal capture system and should not be a stand-alone system, or an add-on with manual interface.

### 20.2. Master Enabling Agreements

The use of master enabling agreements to document trading relationships with counterparties is considered to be the preferred practice and should be followed whenever reasonably possible. The general form of such master enabling agreements shall be approved by the City Council upon recommendation of the ROC before any such master enabling agreement is used for any individual counterparty transaction. Transactions entered into under such contracts and agreements are subject to the requirements of these Regulations, and limited to Approved Products. SJCE staff are responsible for ensuring that master enabling agreements are developed in conjunction with legal counsel review, approved by the City Council and used for the following transactions:

a. The Western Systems Power Pool ("WSPP") Agreement may be used as the master agreement for transacting Approved Products with WSPP members. The WSPP Agreement applies to all transactions between WSPP members unless the parties to a transaction expressly opt out of the WSPP Agreement.
b. The Edison Electric Institute ("EEI") Agreement, or its equivalent, as modified by a set of City Council approved special provisions, may be used as the master agreement for transacting Approved Products. The EEI Agreement provides for an array of reciprocal credit and collateral requirements for each party, and includes negotiated provisions as specified on a "Cover Sheet". The EEI Agreement can also be supplemented with specific annexes (e.g., Credit Annex, Collateral Annex, REC Annex).

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c. Transmission transactions shall be consummated under an Open Access Transmission Tariff or City Council approved bilateral agreement.

A master enabling agreement executed by SJCE and a counterparty provides the general terms and conditions for all transactions entered into with that counterparty. All master enabling agreements are to be executed and entered into in accordance with the ERMP and these Regulations, and with applicable SJCE policy and procedures.

### 20.3. Premium Surcharge on Counterparties Without Master Enabling Agreement

Master enabling agreements require credit and performance assurances from a counterparty that provide protection against counterparty credit risk. In the event SJCE desires to transact with a counterparty without such assurances, a premium surcharge shall be imposed on the counterparty's bid to compensate for its increased credit risk and allow for comparison of the relative prices, taking into account the varying credit risks which might be incurred. The following formula shall be used in calculating the surcharge:

$$Premium\ Surcharge = Edf * Fwd * 1.645 * \sigma$$

Where: (i) *Edf* is the expected default frequency of the counterparty, (ii) *Fwd* is the current forward price, (iii) $\sigma$ is the market implied volatility (or standard deviation) of the commodity price, and (iv) 1.645 represents the number standard deviations where the price falls at a 95% confidence level.

**Example of Premium Surcharge Calculation**

A counterparty with a master enabling agreement where SJCE has accepted changes to its preferred terms, is bidding on SJCE's RFP for a NP-15 peak Energy product for the 3rd quarter. The current market forward price for the product is $50/MWh, market implied volatility is 40%, and the expected default frequency for this counterparty is 0.55%. Therefore, a premium of $0.18/MWh (0.0055*50*1.645*0.4) should be added to the counterparty's bid price for comparison with other bids.

### 20.4. Margin Calls

If a counterparty has exceeded a credit limit, the Middle Office is responsible for initiating a margin call if such action is authorized under the applicable master enabling agreement. Calling margin may include a request for cash collateral or other credit enhancement (i.e., letter of credit, etc.). A margin call is necessary when counterparty credit exposure exceeds an established credit limit. The appropriate timing of a margin call is not dictated by these Regulations. However, factors such as counterparty financial capacity, volume of business, overall portfolio concentration and market conditions should be considered. A margin call should be considered necessary if credit exposure exceeds the counterparty's limit by more than one ratings notch[8]. The same would apply if the

[8] Notch as referenced by Nationally Recognized Statistical Rating Organization (e.g., from BBB to BBB+ represents one notch).



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counterparty suffers a ratings downgrade.

SJCE as a buyer or seller may be exposed to margin calls from counterparties. Middle Office staff must be aware of collateral thresholds assigned to SJCE by counterparties, and monitor these limits no less than monthly, and shall keep the Director informed in the event of market volatility. SJCE may be exposed to margin calls if a significant level of purchases or sales is reached.

### 20.5. Transaction Authority

No new transactions are to be entered into with counterparties that have exceeded their credit limits unless: (1) the new transactions are used to mitigate (offset) existing exposure, and (2) if those transactions have prior approval of the Director, or ROC within authorized limits as established in this Regulations.

## 21. Segregation of Duties

Controls over counterparty inputs and systems operations are of particular importance in ensuring the integrity of data used in counterparty risk control and management. In all cases the Middle Office will be responsible for managing the counterparty review and ratings process and all counterparty reporting. Front Office staff is responsible for recommending new counterparties to the Middle Office for review and approval.

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# APPENDIX 1
## DEFINITIONS

## 1. Definitions

Whenever used in these Regulations, the following terms shall have the following respective meanings, provided, capitalized terms used in these Regulations that are not defined in this Appendix 1 shall have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

1.1. "Approved Counterparty List" is a list of the active trading counterparties that have been authorized for trading, and that have been assigned an approved credit limit by the Middle Office or ROC.

1.2. "Approved Product" means transactions types or products that are authorized pursuant to these Regulations, as specifically identified in Appendix 6.

1.3. "Balance-of-Month Transaction" means a purchase or sale of electric Energy, capacity and/or other related attributes for a term not greater than one month to be performed or delivered within the current or next succeeding calendar month.

1.4. "CAISO Tariff" means the CAISO FERC Electric Tariff.

1.5. "California Independent System Operator Corporation" or "CAISO" means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.

1.6. "Call Option" means an option that gives the buyer (holder) the right, but not the obligation, to buy a futures contract (enter into a long futures position) for a specified price within a specified period of time in exchange for a one-time premium payment. It obligates the seller (writer) of an option to sell the underlying futures contract (enter into a short futures position) at the designated price, should the option be exercised at that price.

1.7. "Cap and Trade Program" means CARB's Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 5 (commencing with section 95800), as such may be amended from time to time, or
(ii) other GHG compliance obligations, including but not limited to, federal, regional, state, or local jurisdictions.

1.8. "CARB" means the California Air Resources Board, or its regulatory successor.

1.9. "CARB Offset Credit" means a tradable compliance instrument issued by CARB that represents a GHG reduction of GHG removal enhancement of one metric ton of carbon dioxide equivalent.

1.10. "City Council" means the City of San Jose City Counsel.

1.11. "Commercial Compliance Policy" means the Commercial Compliance Policy adopted by the City Council, as such may be amended from time to time.

1.12. "Congestion Revenue Right" or "CRR" means a financial instruments made available through the CAISO's CRR Allocations and Auctions. CRRs are acquired primarily for the purpose of offsetting integrated forward market transmission congestion costs that are incurred in the day-ahead market on CAISO managed transmission paths.

1.13. "Cost of Value at Risk" or "Cost VaR" means a calculation that summarizes the expected maximum "cost" exposure over a target horizon within a given confidence level.

1.14. "Counterparty" means a party on either side of a transaction (i.e., purchasing counterparty as opposed to a selling counterparty).

1.15. "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.16. "CRR Allocation" means the process of allocating CRR source-to-sink combinations, both annually and monthly, based on nominations by registered Candidate CRR Holders.

1.17. "CRR Auction" means the awarding of bids for CRR source-to-sink combinations, by the CAISO, made by Candidate CRR Holders based on criteria established by the CAISO.

1.18. "CVaR" means credit value at risk.

1.19. "Deputy Director of Power Supply" means the Department of Community Energy's Deputy Director.

1.20. "Director" means the Director of Community Energy.

1.21. "Director of Finance" means the City of San Jose's Finance Director.

1.22. "Division Manager of Finance and Administration" means the Department of Community Energy's Division Manager.

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1.23. "Emission Allowance" means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

1.24. "Energy" means an electric charge that lets work be accomplished.

1.25. "ERMP" means the Energy Risk Management Policy.

1.26. "FERC" means the Federal Energy Regulatory Commission, or its regulatory successor.

1.27. "Forward Power Transaction" means an Energy transaction that starts beyond the Balance-of-Month.

1.28. "GHG Compliance Instrument" means any instrument, including but not limited to, Emission Allowance, CARB Offset Credit, or Sector-Based Offset Credit that can be used to fulfill a GHG emissions compliance obligation.

1.29. "Greenhouse Gas" or "GHG" includes, but is not limited to, carbon dioxide ("$CO_2$"), methane ("$CH_4$"), nitrous oxide ("$N_2O$"), sulfur hexafluoride ("$SF_6$"), hydro fluorocarbons ("HFCs"), perfluorocarbons ("PFCs"), and other fluorinated gasses.

1.30. "Letter of Credit" means a document, typically from a bank, assuring that a seller will receive payment up to the amount of the letter of credit, as long as certain documentary delivery conditions have been met.

1.31. "Long Term Transaction" means a purchase or sale of, electric power, capacity, transmission and/or other related attributes to be performed or delivered for a duration longer than a Balance of Month Transaction.

1.32. "MTM" means Mark-to-Market. MTM is a measure of the fair value of accounts that can change over time, such as assets and liabilities. MTM aims to provide a realistic appraisal of an institution's or company's current financial situation. The accounting act of recording the price or value of a security, portfolio or account to reflect its current market value rather than its book value.

1.33. "Natural Gas" means a flammable gas, consisting largely of methane and other hydrocarbons, occurring naturally underground (often in association with petroleum) and used as fuel.

1.34. "NRSRO" means nationally recognized statistical rating organization.

1.35. "Prompt month" means the next full calendar month beyond the current month.

1.36. "Regulations" means these Energy and Counterparty Risk Management Regulations.

1.37. “Renewable Energy Credit” or “REC” is the (i) right to the environmental benefits from generating electricity from renewable Energy sources that can be sold and traded and the owner of the REC can legally claim to have purchased renewable Energy, or (ii) as set forth in California Public Utilities Code §399.12, as such can be amended from time to time.

1.38. “Renewable Energy Products” means any combination of Energy, capacity, RECs, or other environmental attributes produced by a generation facility or resource that is eligible to satisfy applicable renewable Energy mandates as defined by federal, state, or local jurisdictions.

1.39. “Resource Adequacy” means the resource adequacy requirements established for load serving entities by their respective governing body having jurisdiction.

1.40. “ROC” means the Risk Oversight Committee.

1.41. “Sector-Based Offset Credit” means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.

1.42. “SJCE” means San Jose Clean Energy.

1.43. “Short-term transaction” means a purchase or sale of electric power, capacity, transmission and/or other related attributes to be performed or delivered for a duration less than a Balance of Month Transaction.

1.44. “Speculation” means the practice of engaging in risky financial transactions in an attempt to profit from fluctuations in the market value of a tradable good such as a financial instrument. Speculation can in principle involve any tradable good or financial instrument.

1.45. “Transmission” means the bulk transfer of electrical Energy, from generating power plants to electrical substations located near demand centers. This is distinct from the local wiring between high-voltage substations and customers, which is typically referred to as electric power distribution.

1.46. “Wholesale Energy Services Provider” means the service provider for scheduling coordinator, portfolio management, and optimization services.

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# APPENDIX 2
## RISK OVERSIGHT COMMITTEE

## 1. Roles and Responsibilities

### 1.1. ROC Members

All members of the ROC have the following responsibilities:

a. Oversee implementation of risk strategy of SJCE as such pertains to transaction activities;
b. Advise on educational needs on risk management at all levels within SJCE;
c. Review proposed changes to the ERMP and these Regulations by other ROC members;
d. Attend all ROC meetings or ensure that fully-briefed alternates attend, including meetings requested by a member requiring ROC approval in a timely fashion; and
e. Monitor key activities of the Front Office, Middle Office and Back Office as such pertain to transaction activities.

### 1.2. ROC Advisors

SJCE's legal counsel has the following responsibilities:

a. Reviewing and approving all forms of contracts used by SJCE to consummate transactions of Approved Products;
b. Determining what legal documentation is required, and proposing monitoring and review procedures to ensure legal and regulatory compliance with the ERMP and these Regulations; and
c. Reviewing processes and procedures associated with transaction activities to ensure legal compliance with all local, state and federal laws and regulations.

ROC members' and all advisors' roles and responsibilities are detailed in the Table 2 below:

**Table 2**
**Roles and Responsibilities**

| Responsibility | City Manager | Director of Community Energy | Director of Finance (Middle Office support) | Budget Director (Middle Office Support) | Risk Manager | SJCE Deputy Director Power Resources (Front Office) | SJCE Manager Finance and Admin. Services (Middle and Back Office) | City Attorney |
|---|---|---|---|---|---|---|---|---|
| Serve as Chairperson for ROC. | e | | | | | | | |
| Review proposed changes to ERMP by other ROC members. | e | | | | | | | |
| Attend all ROC meetings or ensure that a fully briefed delegated representative is present. | t | | | | | | | |
| Oversee implementation of SJCE's risk strategy. | v | | | | | | | |
| Provide accurate reports on the risk management program to the City Council. | r | | | | | | | |
| Ensure to the ROC that operational performance of the Front, Middle and Back Offices are in conformance with policies approved by the City Council. | n | | | | | | | |
| Present ROC-approved recommendations for changes to ERMP for consideration by the City Council. | r | | | | | | | |
| Serve as official spokesperson for the ROC reports | e | | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| to the City Council. | | | | | | | | |
| Advise ROC on proposed portfolio and trader limits. | | | | | | | | |
| Advise ROC on education needs on risk management at all levels within SJCE. | | | | | | | | |

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| Responsibility | City Manager | Director of Community Energy | Director of Finance (Middle Office support) | Budget Director (Middle Office Support) | Risk Manager | SJCE Deputy Director Power Resources (Front Office) | SJCE Manager Finance and Admin. Services (Middle and Back Office) | City Attorney |
|---|---|---|---|---|---|---|---|---|
| Propose change to Front and Back Office Regulations. | | ? | ? | ? | ? | ? | ? | ? |
| Ensure that the ROC is provided with reporting that is consistent with the ERMP and these Regulations. | | ? | ? | ? | ? | ? | ? | |
| Advise ROC on analysis of potential enabling agreements with regard to Front and Back Office operations. | | ? | | | | ? | ? | ? |
| Provide ROC with "market view" of financial market conditions and implications on an as needed basis. | | | ? | | ? | | ? | |
| Ensure Front and Middle Offices, and Legal Counsel participate on new product or transaction type development team. | | | | | | ? | ? | ? |
| Verify that operational performance of the Front, Middle and Back Offices are in conformance with the ERMP and these Regulations. | | | | | | ? | ? | |
| Monitor key activities of Front, Middle and Back Offices. | | | | | | ? | ? | |
| Brief the ROC on transaction operations with special regard to transacting authority and speculation issues. | | | | | ? | ? | ? | |
| Ensure to the ROC that the Middle Office reporting is accurate and in compliance with Middle Office policies. | | | ? | | ? | | ? | |

| Responsibility | City Manager | Director of Community Energy | Director of Finance (Middle Office support) | Budget Director (Middle Office Support) | Risk Manager | SJCE Deputy Director Power Resources (Front Office) | SJCE Manager Finance and Admin. Services (Middle and Back Office) | City Attorney |
|---|---|---|---|---|---|---|---|---|
| Ensure that the ROC is provided with an accurate report on all Middle Office operations, especially with regard to market and credit exposure. | | | ? | | ? | | ? | |
| Advise ROC on proposed changes to Middle Office procedures. | | | ? | | ? | | ? | |
| Provide accurate reports to the ROC on any discrepancies between the Back Office settlement and reconciliation with the deal capture system. | | | | | | | ? | |
| Verify that the ROC is provided with an accurate report on Front Office operations. | | | | | | ? | | |
| Advise ROC on consideration of pending enabling agreements and large contracts with regard to market and credit risk. | | | ? | | | | ? | ? |
| Provide accurate reports on trading operations and all transactions carried out since last ROC meeting and summary of current and future transaction strategies. | | | | | | ? | | |
| Provide ROC with “market view” of future market conditions and results of market models. | | | | | | ? | | |

| Responsibility | City Manager | Director of Community Energy | Director of Finance (Middle Office support) | Budget Director (Middle Office Support) | Risk Manager | SJCE Deputy Director Power Resources (Front Office) | SJCE Manager Finance and Admin. Services (Middle and Back Office) | City Attorney |
|---|---|---|---|---|---|---|---|---|
| Verify to ROC that rules related to transacting authority and speculations are complied with by Front Office. | | | | | | | | |
| Verify that Front Office and Back Office staff are in compliance with all policies and regulations. | | | | | | | | |
| Verify that the ROC is provided the most accurate forecast possible of market trends and a summary of stress testing and sensitivity analysis. | | | | | | | | |
| Verify that the ROC is provided an accurate reporting of all transactions. | | | | | | | | |
| Ensure that the ROC is provided accurate reporting of risk measures and performance monitoring (including MTM, Cost VaR, CVaR) and compliance (limits, transaction authority, transaction type, instrument type). | | | | | | | | |
| Ensure that the ROC is provided with accurate reports on any transactions which exceeded limits, and proposed actions on strengthening compliance procedures and recommendations for corrective action. | | | | | | | | |

| Responsibility | City Manager | Director of Community Energy | Director of Finance (Middle Office support) | Budget Director (Middle Office Support) | Risk Manager | SJCE Deputy Director Power Resources (Front Office) | SJCE Manager Finance and Admin. Services (Middle and Back Office) | City Attorney |
|---|---|---|---|---|---|---|---|---|
| Provide accurate reports on operational performance of Front and Back Offices with strategic objectives and provide solutions for violations. | | | | | | ? | ? | |
| Verify to the ROC that all adopted Regulations are consistent with applicable law. | | | | | | | | ? |
| Verify to the ROC that all approved contracts and enabling agreements have followed a process that is consistent with applicable law. | | | | | | | | ? |
| Provide timely support and legal advice to the Front, Middle and Back Office operations and to the ROC. | | | | | | | | ? |
| Determine documentation and legal review requirements to all processes are consistent with applicable law. | | | | | | | | ? |

# APPENDIX 3
## AUTHORIZED CRR TRANSACTING GUIDELINES

## 1. Congestion Revenue Rights Transacting Guidelines

Congestion Revenue Rights are used by CAISO market participants to hedge against the cost of congestion associated with delivering resources to serve load obligations within a locational marginal price (LMP) market.

### 1.1. CRR Allocation Process

SJCE staff will participate in the CRR Allocation and Auction markets as follows:

SJCE staff nominates its CRRs during the allocation process in general conformance with the following methodology:

a. CRR nominations are limited by the seasonal/monthly eligible quantities.
b. CRR valuation of source/sink combinations are based upon the historical congestion component of the LMP. If access to an Integrated Forward Market (IFM) pricing model becomes available, simulated prices may be used in the CRR valuation process.

CRRs that have SJCE generation or scheduling points as sources, and the DLAP_PGAE-APND pricing node as the sink, are nominated first when the expected average congestion is statistically greater than zero, and no one historical period exhibited large negative congestion. Nominated amounts are equal to or less than expected generation in order to create a perfect or partial hedge. When expected congestion is low, nominated amounts are low and increase as expected congestion increases.

a. After exhausting possible SJCE source/sink pairs, then nominations may be made from non-SJCE source/sink combinations that statistically have positive average congestion across historical periods with, no substantial negative congestion, as follows:
    1) Rank the CRRs by congestion value.
    2) Nominate the highest valued CRRs first, working down the possible Source-Sink combinations until the seasonal/month eligible quantities are exhausted.
    3) Avoid large positions at any one non-SJCE sourced CRR.
    4) Avoid clustered CRRs (e.g., source CRRs in the same geographic area that would expect to have the same or similar congestion component price).
b. Avoid nominating both SJCE and non-SJCE sourced CRRs when data and experience shows that the CRR will not clear the allocation feasibility test.
c. Once the above selection criteria results in a nomination portfolio, and prior to final submission, SJCE stress tests the portfolio on historical data for any large negative single period positions and if found removes that position prior to submission.

## 1.2. CRR Auction Process

SJCE staff bids into the CRR Auction in general conformance with the following methodology:

a. Bids are made only to unwind CRRs obtained in the allocation process that are non-hedged, or are expected to have a negative value due to operational changes.
b. Prices on the bid curves start at zero and go negative.
c. Bids that clear in the auction result in revenue to SJCE and reduce overall risk by unwinding existing un-hedged allocation portfolio positions.
d. Auction revenue is left in the SJCE CRR collateral account until the monthly/seasonal period is over.

# APPENDIX 4
## AUTHORIZED APPROVED PRODUCT TRANSACTION LIMITS

## 1. Approved Product Transaction Limits

### 1.1. City Council

a. Approving all long-term supply strategies and Integrated Resource Plans.
b. Approving all long-term Approved Product Transactions

### 1.2. Director

The Director is assigned the following primary responsibilities and transactions limits:

a. Developing long-term supply strategies.
b. Approval of financial authority limits associated with Approved Product transactions as recommended by the ROC.
c. Authority for individual transactions as authorized under City Council approved agreements or resolutions.
d. Approval authority for Approved Product transactions up to, but not greater than, 115% of a SJCE's annual load forecast, including executed fuel transactions that have been made to support generation operations up to 115% of load. These transactions are limited to short-term transactions that do not to exceed $500,000 per day and have a duration longer than 1 year. The Director should seek Council approval for all transactions over 6 months and $1,000,000 unless there is a time constraint. The approval will be a delegated Authority to enter into an approved enabling agreement with a not to exceed value.
e. All optimization strategies, statistical/procedural risk management methods (including risk tolerances), and resulting exposures.

### 1.3. Deputy Director of Power Resources

The Deputy Director of Power Resources is assigned the following primary responsibilities and transaction limits:

a. Authority to enter individual transactions with a term not to exceed 6 cumulative months, and not to exceed $1 Million dollars. When possible the Deputy Director should seek written approval from the Director of Community Energy for all transactions over $500,000.

### 1.4. Scheduler and Planner (SJCE's Wholesale Energy Services Provider)

a. Planning functions to determine the appropriate transactions necessary to maintain load/resource balance from day-ahead to Balance-of-Month in duration, and prompt month beginning 10 days prior to the conclusion of the current month.

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b. Approval authority for Approved Product transactions up to, but not greater than, the hourly peak load forecast,
c. Authority to enter individual transactions with a term not to exceed balance-of-month, and prompt month beginning 10 days prior to the conclusion of the current month. Transacting is limited to variability between supply requirements and available resources. **In all cases transactions should not exceed $500,000 per day or 1 year in duration.**

**Approved Product Transaction Limits Summary**

| | **Director of Community Energy** | **Deputy Director of Power Resources** | **Scheduler / Planner**<br><br>**SJCE Wholesale Energy Services Provider** |
|---|---|---|---|
| **Transaction Term Limits:** | As authorized under City Council approved resolutions, programs or project agreements. | Transactions for a term up to 6 months and $1 Million dollars | Day-ahead to balance-of-month. Prompt month beginning 10 days prior to conclusion of current month. |
| **Transaction Volume Limits:** | Approved Product volume limits up to 115% of annual load forecast.<br><br>Not to exceed $500,000/day or 1 year<br><br>Where possible Director should seek Council approval for all Contratcs over 6 months and $1 Million dollars | Approved Product volume limits up to 115% of annual load forecast.<br><br>Not to exceed 6 months or $1 Million dollars | 1. Approved Product volume limits up to Hourly peak load forecast.<br><br>2. Transacting limited to variability between load requirements and available resources.<br><br>Not to exceed $500/day or 1 month |

# APPENDIX 5
## NEW PRODUCT DEVELOPMENT PROCEDURES

### 1. New Product Development

When the Front Office staff request to transact a new product type, instrument or strategy, several control processes must take place to ensure SJCE can identify, manage, control and report on the risks from the new transaction.

The process for submitting a request for a new Approved Product type is as follows:

1. The Front Office staff notifies Middle Office staff of his/her desire to enter into a new type of transaction. The Front Office staff are responsible for reviewing the transaction details, including all the key risk, pricing and operational elements of the transactions with Middle Office staff. Middle Office staff assume responsibility for undertaking all the risk and processing implications of the proposed transaction.

2. The Front Office staff is responsible for preparing a new product report for review and consideration by Middle Office staff. This report requires the Front Office staff to document all of the risk attributes of the transaction, and how they will be controlled (primarily focusing on market and credit risk).

3. Middle Office staff will review the new product report and begin the process of determining SJCE's ability to record, process and manage the transaction.

4. Middle Office staff first ascertains if the Front Office staff has the ability to accurately price the transaction. Secondly, Middle Office staff determines whether the risk of the transaction can be accurately measured. In either case, if the Front Office staff does not have the capability to price or measure the risk of the transaction, the Front Office staff is notified, and the Front Office staff must discuss the model development or purchase options with the Middle Office staff before the transaction can be authorized.

5. If the Front Office staff can price and model the risk of the new product, then the Middle Office staff will evaluate the Front Office's operational readiness to execute the transaction. The Middle Office staff will also evaluate the Middle Office's and Back Office's readiness to transact the new product. If any outstanding issues or concerns are identified by the Middle Office staff as part of the review, the issues or concerns identified must be resolved prior to transacting the new product.

6. The Middle Office staff then gathers all of the new product report summaries, and prepares a written recommendation to the ROC for consideration and approval. This written recommendation will consider whether or not the risks and potential control considerations, if any, warrant entering into the new product type.

## New Product Approval Checklist

| Risk/Task to be Completed During the Analysis | Primary Accountability |
|---|---|
| **Business Strategy** | |
| Sponsor new strategy | Front Office |
| Understand and document the economics of the new strategy | Front Office |
| Define the resource requirements for the new product | Front Office |
| **Regulatory and Legal Risks** | |
| Identify applicable California and local regulatory restrictions for product or business | Legal Counsel |
| Verify counterparty power and authority to enter into activity | Legal Counsel |
| Determine what legal documentation is required | Legal Counsel |
| Propose monitoring and review procedures to ensure legal/regulatory compliance | Legal Counsel |
| Designate the supervisor responsible to ensure that the product is sold only to counterparties for which it is suitable | Front Office |
| Determine if sufficient resources are available to support regulatory and legal requirements | Front Office |
| **Market Risks** | |
| Identify and analyze market risk | Front Office/Middle Office |
| Specify management's intention (Hold positions, actively trade or hedge) | Front Office |
| Propose fair market value and risk measurement methodology | Middle Office |
| Determine hedging approach | Front Office |
| Establish product trading limits | Middle Office |
| Determine impact on total position limits | Middle Office |
| Establish special interim limits on control the new product expansion in a measured, granular manner | Middle Office |
| Define and recommend management reporting requirements | Middle Office |
| Present report format for communication of positions on a timely basis | Front Office |
| Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items | Middle Office |
| **Credit Risks** | |
| Identify and analyze credit risk of product | Middle Office |
| Develop methodology for capturing facilities and counterparties in the credit reporting system and measuring credit risk and concentration exposures | Middle Office |
| Define procedure for monitoring credit exposure | Middle Office |
| Identify target counterparties, determine suitability and request credit facilities | Middle Office |
| Determine proper procedure for perfecting collateral, netting agreements | Middle Office |
| Recommend maximum credit exposure limits for counterparties | Middle Office |
| Develop capability to report daily/weekly credit limit compliance | Middle Office |
| Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items | Middle Office |
| **Operational Risks** | |
| Verify consistency with ERMP | Front Office/Middle Office |
| Define transaction tracking plan and procedures | Middle Office |
| Develop required deal sheet modifications | Front Office |
| Settlement procedures – how will transaction payment/billing be handled? | Back Office |
| Authorizations/approvals – what approval levels or delegation of authority is required? | Front Office/Middle Office |
| Develop procedure for transacting from start to finish | Front Office/Middle Office/Back Office |

Note: Advice services in areas such as valuation, market/credit risk management, legal review, accounting/tax may also be sought and presented as part of this process.

# APPENDIX 6
## APPROVED PRODUCTS

### 1. Approved Products

The Energy and Energy related products that SJCE is authorized to transact are as follows:

| Approved Products | Pre-Approved Examples | Authorization |
|---|---|---|
| **1. Long Term Transactions for Energy** | • Purchases of Energy to cover the forecasted supply shortage of the SJCE<br>• Sales of Energy amounts that are forecasted to be surplus to SJCE's need<br>• Liquidating "in the money" and "out of the money" transactions for optimization in accordance to a dual volume-VAR framework. | • Authorized in accordance with the limits as set forth in these Regulations. |
| **2. Balance-of-Month Transaction for Energy** | • Energy purchases/sales within defined term and volume limits<br>• Forecasting errors | • Authorized in accordance with the limits as set forth in these Regulations. |
| **3. Day-Ahead and Real-Time Power Transactions Through a BAA (e.g., CAISO)** | • Purchasing Energy from the CAISO day-ahead and/or real-time market to serve load<br>• Selling Energy into the CAISO day-ahead and/or real-time market from generation resources | • Authorized in accordance with the limits as set forth in these Regulations. |
| **4. Purchase/Sale of Capacity** | • Short-term or forward purchases of capacity products (e.g., Ancillary Services and Resource Adequacy products)<br>• Short-term or forward sales of capacity products (e.g., Ancillary Services and Resource Adequacy products) | • Authorized in accordance with the limits as set forth in these Regulations. |
| **5. Transmission** | • Purchases/sales of firm and non-firm transmission capacity required for the delivery Energy | • Authorized in accordance with the limits as set forth in these Regulations. |

| Approved Products | Pre-Approved Examples | Authorization |
|---|---|---|
| **6. GHG Compliance Instruments** | • Purchases of Emission Allowances from bilateral trades, and from the CARB administered Cap and Trade Program auctions and reserve auctions to satisfy actual and/or forecasted GHG emissions compliance obligations attributed to SJCE generation and scheduling activities (e.g. imports) | • Authorized in accordance with the limits as set forth in these Regulations. |
| **7. Renewable Energy Products** | • Purchases of Renewable Energy Products to satisfy any requirement for such products under applicable law; Bilateral purchases are to be consummated under approved contract forms, follow approved credit risk limit procedures, and all other applicable risk management practices defined in this regulation<br>• Sales of Renewable Energy Products for the sole purpose of eliminating a surplus | • Authorized in accordance with the limits as set forth in these Regulations. |
| **8. Congestion Revenue Rights** | • Participation in the CRR Allocation and CRR Auction processes through the submission of nominations and/or bids in the Annual and/or Monthly Congestion Revenue Right Allocation and Auction processes administered by the CAISO | • Authorized in accordance with the limits as set forth in these Regulations.<br>• See Appendix 3 to these Regulations |

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# APPENDIX 7
## MANAGEMENT REPORTS

### 1. Management Reports

The following energy risk management reports shall be developed and presented as further described in the following table:

| | Primary Responsibility | | | Report Frequency | | | | Approval |
|---|---|---|---|---|---|---|---|---|
| **Management Report** | **Front** | **Middle** | **Back** | **Weekly** | **Monthly** | **Quarterly** | **Annual** | |
| Load and Resource Balance | X | | | | | X | | CED Deputy Director of Power Resources |
| Portfolio Performance | | X | | | | X | | CED Division Manager |
| Portfolio Risk Exposure (Open Position Cost VaR) | | X | | | | X | | CED Division Manager |
| Exceptions Report | | X | | | | X | | CED Division Manager |
| Master Agreements | X | | | | | | X | CED Deputy Director of Power Resources |
| Policies Update | | X | | | | | X | CED Division Manager |
| Transaction Position Detail | | X | | | X | | | CED Division Manager |
| MTM | | X | | X | | | | CED Division Manager |
| Credit Limit Status by Counterparty | | X | | X | | | | Finance |
| Trading Strategy | X | | | | X | | | CED Deputy Director of Power Resources |
| Scenario Planning | X | | | | | | X | CED Deputy Director of Power Resources |

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| | Primary Responsibility | | | Report Frequency | | | | Approval |
|---|---|---|---|---|---|---|---|---|
| **Management Report** | **Front** | **Middle** | **Back** | **Weekly** | **Monthly** | **Quarterly** | **Annual** | |
| Pending Agreements | X | | | | | X | | CED Deputy Director of Power Resources |
| Energy Transaction Summary | X | | | | X | | | CED Deputy Director of Power Resources |
| Non-Energy Transaction Summary | X | | | | X | | | CED Deputy Director of Power Resources |
| Market Forecast | X | | | | X | | | CED Deputy Director of Power Resources |
| Performance to Budget | | | X | | | X | | CED Division Manager / Budget? |
| Procedure Exceptions | | | X | | X | | | CED Division Manager |

### 1.1. Description of Management Reports

a. Load and Resource Balance: Front Office report detailing total resources by source as compared to total load. Report shows supply surpluses and shortages. The Load Resource Balance report is developed weekly and presented to the ROC quarterly.

b. Portfolio Performance: Middle Office report comparing the cost of the portfolio of contracts, to the market value of the portfolio (tracking what we paid for it to what it's worth now). This is the counterparty to the risk exposure report. The Portfolio Performance report is developed weekly and presented to the ROC quarterly.

c. Portfolio Risk Exposure (Open Position Cost VaR): Middle Office report showing portfolio exposures by month due to price volatility. The Portfolio Risk Exposure report is developed weekly and presented to the ROC.

d. Exception Report: Middle Office report summarizing current exception and violation reports. The Exception Report is developed quarterly presented to the ROC.

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e. Master Agreements: Front Office report summarizing the current set of approved master agreements by approved counterparty. The Master Agreements report is developed quarterly presented to the ROC.

f. Policies Update: Middle Office report providing annual review of risk management policies and procedures and recommendations for updates. The Policies Update report is presented to the ROC.

g. Transaction Position Detail: Middle Office report showing detail of Portfolio Performance report. Individual deal details showing MWh under contract and total dollars sorted by counterparty in support of the Portfolio Performance report are included in this report. The Transaction Position Detail report is presented to the ROC.

h. MTM: Middle Office report showing MTM for life of deals by counterparty. The MTM report is developed weekly presented to Front Office and Back Office staff quarterly.

i. Credit Limit Status by Counterparty: Middle Office report showing counterparty credit limits, credit used and credit remaining. Special flagging of counterparties nearing their credit limits should also be shown. The Credit Limit Status by Counterparty report is presented to Front Office and Back Office staff weekly.

j. Trading Strategy: Front Office report detailing trading strategies for various periods (e.g., daily, monthly, quarterly, future years). The Trading Strategy report is presented to the ROC quarterly.

k. Scenario Planning: Front Office report detailing potential scenarios, expected result and probabilities. The Scenario Planning report is presented to the ROC quarterly.

l. Pending Agreements: Front Office report detailing status of negotiations with potential counterparties on enabling agreements. The Pending Agreements report is developed weekly and presented to the ROC quarterly.

m. Energy Transaction Summary: Front Office report summarizing, by counterparty, Energy related transactions, both completed and contracted, involving Energy delivery. The Energy Transaction Summary report is developed weekly and presented to the ROC quarterly.

n. Non-Energy Transaction Summary: Front Office report summarizing, by counterparty, non-CAISO market Energy related transactions (puts, calls, options, RECs, GHG Compliance Instruments and etc.) which do not involve (or are not specifically reliant on) Energy delivery. The Non-Energy Transaction Summary report is developed monthly presented to the ROC quarterly.

o. Market Forecast: Front Office report detailing forecast of market for periods (e.g. monthly, quarterly, future years). The Market Forecast report is presented to the ROC.

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p. Performance to Budget: Back Office report comparing incurred Energy costs to budgeted costs and existing contracts and uncovered exposure at market prices to remainder of budget. The Performance to Budget report is developed for SJCE staff weekly and presented to the ROC quarterly.

q. Procedures Exceptions: Back Office report noting any procedure exceptions. The Procedures Exceptions report is presented to the ROC quarterly.

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# APPENDIX 8

## RISK ASSESSMENT METHODOLOGIES

## 1. Risk Assessment Methodologies

### 1.1. CRR Valuation and Risk Assessment

CRR valuation is based upon historical data. SJCE values its CRR holdings individually and as a portfolio. Along with the average valuation, SJCE calculates the fifth ($5^{th}$) percentile and $95^{th}$ percentile position of each CRR Source/Sink combination.

SJCE performs a stress test on its CRR nominations. The stress test identifies the minimum, maximum and expected revenue for each available seasonal/monthly historical period.

The highest risk to SJCE's CRR allocation and auction portfolios is a collateral call. The CAISO does not net the portfolios, so the risk is a result of the separate collateral requirements for each portfolio. The expected value of SJCE's allocated CRR portfolio is positive. SJCE's auction portfolio consists only of unwound allocated CRR; as such, the expected value is negative. A collateral call could occur if an event increased the expected negative value of the auction portfolio even though the actual day-ahead market position would be offset by an increase in the expected value of the allocation portfolio.

SJCE mitigates this risk by leaving all its auction revenue in the CRR collateral account at the CAISO. SJCE's initial deposits of $500,000 for the annual auction, and $100,000 for the monthly also remain in the collateral account.

SJCE will only request a return of its auction revenue after the end of each monthly/ seasonal period, thereby maintaining usable secured available credit well in excess of its required collateral.

### 1.2. Mark-to-Market Methodology

The MTM calculation is a method to value future or forward open trading or hedge positions on an on-going basis to track market price changes. Once a position is taken in the market for some future delivery period, the value of that position must be monitored and managed on a routine basis. The volatility and volume of activity for a particular traded product will dictate how often it is necessary to update the MTM valuation of such product. SJCE will "mark" all open positions on no less than a MONTHLY basis, or as necessary, given market dynamics.

Long Term Transactions for future delivery or receipt of Energy. Several trading hubs host the majority of physically traded contracts such as Palo Verde (PV), California Oregon Border (COB), Mid-Columbia (Mid-C), California South (SP15), and California North (NP15). There are also several

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emerging hubs in the desert southwest and rocky-mountain areas. Publications such as *Megawatt Daily* and *Energy Market Report* list the daily prices traded at more heavily traded hubs. Information sources such as McGraw Hill publishing report broker trades for forward contracts at the most active trading points. For illiquid products or trading points, the MTM may be applied less frequently than daily. In these circumstances a weekly or monthly mark may be appropriate. However, periodic market inquiries, as appropriate, should be made to capture any market movement.

The following information sources, or their equivalents as approved by the Middle Office and Front Office, are to be used to mark open positions for the traded products and hubs listed below:

a. **WSPP Contracts for Liquid Products and Trading Hubs:** The standard forward traded electricity products as reported in the *Energy Market Report, published by Insight Research, Inc.,* or other relevant broker/trade reporting system. This source may be replaced at such time that SJCE has available an information service such as the Intercontinental Exchange ("ICE"), *Reuters North America Power* or other reliable source.

b. **WSPP Illiquid Products and Trading Points:** these products are likely to change value less often than the more standard products. Periodic (weekly or bimonthly) probing of the market may be necessary to obtain current valuation. It may be possible to identify basis relationships between the liquid and illiquid trading points resulting in an approximate valuation.

### 1.3. Cost Value at Risk Calculation Methodology

In its most literal sense, Value at Risk (VaR) refers to a particular *amount of money*, the maximum amount likely to be spent or lost over some period, at some specific confidence level. SJCE has defined its supply management activity as a cost hedging activity. Therefore, for purposes of power resources management, Cost VaR is defined as a single, summary statistical measure of possible costs that are in excess of, expected costs.[9]

Traditional VaR methodology (as practiced in the financial sector) has two important characteristics. The first is that it provides a common consistent measure of risk across different positions and risk factors. The other characteristic of VaR is that it takes account of the correlations between different risk factors. If two risks offset each other, the VaR allows for this offset and tells us that the overall risk is fairly low. If the same two risks don't offset each other, the VaR takes this into account as well and gives us a higher risk estimate.

Since Cost VaR tells us about SJCE's maximum cost exposure, management can use it to determine

[9] Specifically, standard, or traditional, VaR is a measure of cash flow exposure due to "normal" market movements; traditional VaR would be used when monitoring hedge positions initiated with financial derivatives. Costs or losses greater than VaR estimates are suffered only with a specified small probability (e.g., 5% of the time, etc.). However, VaR is not a stress test – it will not indicate what a maximum loss may be 5% of the time.

internal capital allocation. Cost VaR can be used to determine capital requirements at the senior management level of the organization, and also down the line to the level of the individual transaction decision. The higher the risk associated with the transaction, the higher the VaR and the greater the capital requirement. Cost VaR can also be used to assess the risks associated with different transaction opportunities and the implications of various risk tolerance thresholds. Cost VaR can also be used to evaluate the performance of divisions.

### 1.4. Methodology

The two (2) principal components of the traditional VaR calculation are the:

a. Market
b. Portfolio

The "Market" involves understanding and estimating how the particular market parameters behave over a specified holding period. This is captured by performing market parameter modeling. The "Portfolio" involves understanding and quantifying how the portfolio's value varies according to estimated changes in market parameters. This is captured by revaluation. The standards applied to market parameter modeling and revaluations are described below. These two components are illustrated as follows:

**Market** > **Market Parameter Modeling** >

a. Distribution assumptions
b. Correlation assumptions
c. Parameter assumptions

**VaR Calculation**

**Portfolio** > **Revaluation** >

a. Historical Simulation
b. Monte Carlo Simulation
c. Full revaluation
d. Analytic (Covariance/Variance Method)
e. Sensitivities
*f.* Sensitivity Analysis

*or any reasonable* combination of these

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### 1.5. Market Parameter Modeling

During market parameter modeling, various assumptions are made in relation to the distributions and correlations between assets, or products in the case of electricity, within the same risk category, or hub jurisdiction (i.e., SP15 vs. COB, etc.). In addition, various estimations are made with respect to the level of commodity prices and their implied volatilities.

Market parameters should be modeled on the basis of the following:

a. Distribution assumptions for the market parameters are normal (this is a primary assumption for Cost VaR);
b. Parameters are usually estimated on the following:
    1) a one (1) month holding period, which is consistent with the frequency of revaluation of all financial trading positions.
    2) the historic time period of one (1) calendar year or 252 days, unweighted, should be used to calculate historic volatilities and correlations.

Although distribution assumptions are assumed normal, management recognizes that actual power price distributions have displayed a skewed distribution. Traditional VaR methodology is not currently appropriate for the electric power industry. However, it may be appropriate for measuring positions in natural gas, whether physical or financial. Cost VaR, in the context of electricity portfolios, is not concerned with duration or term parameters (such as holding periods, etc.) since electricity products currently have predefined terms (e.g., hourly product, month product, quarterly product, etc.)

For modeling purposes, the Cost VaR is taken from the 95.0% quartile of the distribution of changes in the hourly chronological simulation of loads and resources (1.645 standard deviations).

### 1.6. Portfolio Revaluation

Revaluation is the calculation of the changes in portfolio costs resulting from a change in specific model assumptions (i.e., price, risk tolerance, volatility, etc.).

Two revaluation techniques are permitted:

a. Full revaluation: Full revaluation occurs where the transactions in the portfolio, or positions, are all individually marked to market value for each market rate scenario generated. This is also true for Cost VaR applications.

b. Delta approximation: Delta refers to the change in one variable given a change in another variable. A sensitivity analysis is an *approximation* of the change in net present value for various sensitivities of the portfolio. Sensitivity analysis may be used only for linear approximation. For linear approximation the sensitivity of the rate of change of the price of the transaction to a small change in the market rate is calculated. This is more applicable to traditional VaR where linear relationships and correlations may exist between financial

instruments. On a more simplified level, Cost VaR considers delta approximation when adjustments are made to parameters such as risk tolerance, price, and volatility.

For purposes of traditional VaR, the range should cover at least 1.645 standard deviations in either full revaluation or delta approximation. Any reasonable combination of the above is also permitted. For example, a combination of the above might be used for large portfolios which contain both complex and simple instruments and for which different revaluation techniques are appropriate.

The risk measurement methodology must take the current mark-to-market value supplied and apply revaluation techniques to calculate the potential loss or VaR, which may arise from the future changes in market.

**Note**: Sensitivity analysis is appropriate for individually measuring risks which may not otherwise be measured on a full portfolio basis such as location or spread risks. Sensitivity analysis is not appropriate for products with non-linear price behavior. In particular, option portfolios contain a high degree of non-linearity. This means that the change in the portfolio value has a non-linear relationship with changes in the underlying asset price. In this case, a sensitivity analysis is no longer valid.

### 1.7. VaR Calculation

Monte Carlo simulation is the preferred approach to VaR calculation for all portfolios. This is also true for Cost VaR when simulating loads and resources. However, the Analytic Method (Variance/Covariance) will be used if SJCE does not have the computing power necessary to generate a Monte Carlo simulation. SJCE recognizes that the Analytic Method is inappropriate for portfolios with non-linear characteristics (i.e., optionality) and will make the necessary adjustments when portfolio non-linearity becomes significant.

<u>Monte Carlo Simulation Method:</u>

Monte Carlo simulation estimates Cost VaR from a simulated distribution that is derived by assuming particular theoretical market processes and simulating large numbers of random paths that prices, or other parameters, could follow. The method proposes that if we take a sufficiently large number of simulations, they will produce a simulated distribution that will converge to the unknown true distribution of portfolio values. VaR and Cost VaR can be inferred from the simulated distribution. The steps required in a Monte Carlo simulation are as follows:

a. Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
b. Generate an appropriate distribution of random variables;
c. Perform the simulation by applying the covariance to the random numbers to generate a set of correlated market parameter scenarios; and
d. Apply market parameter scenarios to the portfolio and, using revaluation method set, generate a distribution of portfolio values.

Analytic Method (Variance/Covariance):

The Analytic Method is based on the same distribution assumptions for market parameter modeling as the Monte Carlo method but restricts the portfolio to linear risk components only. This allows the analyst to assume that the portfolio changes are normally distributed.

The steps required in the analytic VaR calculation are:

a. Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
b. Calculate the vector of sensitivities with respect to the underlying spot rates;
c. A first order approximation is used to calculate changes in portfolio value. Given the normality assumption, the distribution parameters can then be calculated analytically using the sensitivities determined in step 2 above.

The VaR is defined as 1.645 the standard deviation of the change in portfolio value which equals – under the assumption of zero mean – a confidence level of 95%.

### 1.8. Cost VaR Stress Testing Methodologies and Procedures

In broad terms, there are two (2) main approaches to Cost VaR stress testing. The first of these focuses on the impact of particular specified scenarios – typically a fairly limited number of such scenarios – that are fed into an analytical process. This approach to stress testing is usually known as scenario analysis. The term "stress testing" is used here to apply to any procedures that attempt to evaluate the impact of hypothetical future events on SJCE's hedging and/or transacting portfolios.

The term "scenario analysis" is used to apply to that type of stress testing that focuses on particular specified *scenarios*, as distinct from the second type of stress testing that specifies classes of mathematical or *statistical possibilities* and then works through these possibilities in a mechanical way. Note that scenario analysis only indicates what SJCE stands to "spend" in a particular circumstance, and does not indicate (and is not designed to indicate) how likely any particular circumstance is to occur. Scenario analysis is therefore a natural complement to Cost VaR approaches that indicate something about the probability of a clearly defined event, but do not as such identify what SJCE would spend if the event actually occurred.

The Cost VaR stress testing methods approved for use by the ROC include 1) worst-case scenario analysis, and 2) extreme value analysis.

Worst-Case Scenario Analysis (WCSA):

WCSA allows an examination of the worst case that is *expected to occur* (Boudoukh, Richardson and Whitelaw, 1995). This approach is useful when there is concern about maximum possible costs over

a particular horizon period (e.g., one month, one year, etc.) and an expectation of some savings or cost over each sub-period (e.g., each day or month). The worst-case scenario is the cost associated with the most adverse daily outcome. If each outcome is a random variable Z*i*, and there are *n* sub-periods in our horizon, then the worst-case scenario is:

a. Min[Z1, Z2,…Z*n*]

The actual worst-case scenario can now be estimated by running simulations of the random Z variables.

Extreme Value Analysis (EVA):

This approach starts from the premise that the extreme values of the cost distribution are what we are mostly concerned about, and then uses the statistical theory of extreme values to determine maximum extreme costs with a determined degree of confidence.

In practice the distribution of extreme values is not known, but the key insight of EVA theory is that this distribution converges in large samples to a limiting distribution of a particular known form. An analytic solution for the Cost VaR can then be found from this distribution once a desired confidence level is specified. The important parameter is the tail index, which gives the thickness of the tails (e.g., for a *t*-distribution, this is the number of degrees of freedom).

The Extreme Value Analysis approach has various attractions: (1) It deals directly with the extreme values typical of the electric Energy market. (2) It provides a firm methodological basis for the estimation of Cost VaR. (3) It does not impose any particular form on the underlying price distribution, but instead allows this distribution to take any well-behaved form, including an asymmetric (i.e., skewed) one. (4) It produces a simple analytical formula for Cost VaR. (5) The approach is robust, flexible and easy to use.

**Note**: Standard VaR methodology will be used to evaluate exposures resulting from activity in financial instruments. Currently, the electric power industry has not developed a highly liquid market in financial instruments. However, the natural gas market is relatively mature and offers opportunities in the use of financial instruments for the purpose of cost hedging. Standard VaR methods can be utilized more appropriately with natural gas as market performance generally follows a normal distribution.

Backtesting:

The purpose of a backtest is to compare the expected cost (at the then forward price) with actual cost (at the spot price), and implied volatility with actual volatilities, to determine if SJCE's cost VaR is adequate (conservative enough) to capture the potential market exposure.

To serve such purpose, staff may use the same open position number forecast 12 months ago and apply the DA spot market price in the past 12 months. This number would be the "actual cost" of

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the open position had it stayed unchanged and filled in the DA market. Comparing the difference between the two numbers will provide guidance as to whether the variance falls within the 95% cost VaR boundary and identify whether SJCE would have been better off leaving the position open or covering it 12 months ago.

SJCE has performed backtesting of the Cost VaR measures during the in-house model development and validation phase. The backtesting results revealed adequacies in the Cost VaR measures (given the statistical confidence intervals used or various parameters.

# APPENDIX 9

## RECOMMENDED COVERAGE

The following Time-Price Coverage Matrix will be used as a guide for SJCE's short term and long term procurement strategies. The objective of the Time-Price Coverage Matrix is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate SJCE's exposure to market price volatility and other pricing risk. SJCE will strive to further develop this matrix based on (1) SJCE's wholesale price risk and (2) appropriate limits for these risks. The actual covered positions taken by SJCE, reflected as a percentage of forecasted load, may deviate from the following Time-Price Coverage Matrix based upon SJCE's staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

| Months to Delivery | | Price Matrix Percentile | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | >60% | 60% | 50% | 40% | 25% | 10% | <10% |
| | | Covered Position as a % of Forecasted Load | | | | | | |
| 0+ | 3 | 80% | 80% | 85% | 85% | 90% | 90% | 100% |
| 3+ | 6 | 70% | 70% | 75% | 80% | 80% | 90% | 100% |
| 6+ | 9 | 70% | 70% | 75% | 80% | 80% | 80% | 90% |
| 9+ | 12 | 60% | 60% | 70% | 80% | 80% | 80% | 90% |
| 12+ | | 60% | 60% | 70% | 80% | 80% | 80% | 90% |

DRAFT

EXHIBIT: SJCE #10
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 5-NCPA Contract GILES
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 5-NCPA Contract GILES

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

ORIGINAL

City of San Jose
Office of the City Clerk

MAY 09 2018

☒ ACCEPTED
☐ REJECTED

# SERVICES AGREEMENT

# BETWEEN

# NORTHERN CALIFORNIA POWER AGENCY

# AND

# SAN JOSE CLEAN ENERGY

66335-0

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This SERVICES AGREEMENT ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the City of San Jose, a municipal corporation, ("Customer") for the purposes of providing certain wholesale energy services to San Jose Clean Energy. NCPA and Customer are together sometimes referred to herein individually as a "Party" and collectively as the "Parties".

This Agreement is made as of _____, 2018 (the "Effective Date").

**Section 1. RECITALS**

This Agreement is entered into based on the following facts, among others:

1.1 NCPA has heretofore been duly established as a joint powers agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

1.2 Customer has chosen to aggregate the electric load for San Jose residents and businesses through a community choice aggregation program, which has been named San Jose Clean Energy ("SJCE").

1.3 NCPA is a certified Scheduling Coordinator in accordance with the CAISO Tariff.

1.4 NCPA has established facilities, staff and the capability for the provision of Services to Customer.

1.5 Customer desires NCPA to provide Services to Customer.

1.6 NCPA is willing to provide Customer with Services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the amount and sufficiency of which are hereby acknowledged, NCPA and Customer agree as follows:

**Section 2. DEFINITIONS**

2.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms will have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 2 of this Agreement will have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

2.1.1 "Agreement" means this Services Agreement, including all Appendices, attached hereto.

2.1.2 "Balance of Month Transaction" means a purchase or sale of electric energy, capacity and/or other related attribute for a term not greater than one calendar month to be performed or delivered within the current or next succeeding calendar month.

2.1.3 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and close at 5:00 p.m. local time.

2.1.4 "Calendar Day" means all days, including Saturdays, Sundays or Federal Reserve Bank holidays.

2.1.5 "California Independent System Operator Corporation" or "CAISO" means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.

2.1.6 "CAISO Tariff" means the CAISO FERC Electric Tariff.

2.1.7 "Commission" means the NCPA Commission established by the Joint Powers Agreement.

2.1.8 "Customer" has the meaning set forth in the preamble hereto.

2.1.9 "Director" means the City of San Jose's Director of Community Energy or his/her designee, which designation may be withdrawn or amended from time to time.

2.1.10 "Effective Date" has the meaning set forth in the preamble hereto.

2.1.11 "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Customer now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Customer is not the sole owner of an asset or property or to the extent that an asset or property is used in part for generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, only the Customer's ownership interest in such asset or property or only the part of the asset or property used for electric purposes will be considered to be part of its Electric System.

2.1.12 "Event of Default" has the meaning set forth in Section 10.1 of this Agreement.

2.1.13 "FERC" means the Federal Energy Regulatory Commission, or its regulatory successor.

2.1.14 "General Manager" means the General Manager of NCPA.

2.1.15 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry within the United States of America during the relevant time period, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with NERC or WECC approved business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the electric utility industry within the United States of America.

2.1.16 "Joint Powers Agreement" means the Amended and Restated Northern California Power Agency Joint Exercise of Powers Agreement dated as of January 31, 2008.

2.1.17 "Material Adverse Effect" means an error, penalty, unexpected charge, event, circumstance or condition with a detrimental cost of One Hundred Thousand Dollars ($100,000.00) or more to Customer that is not due to Uncontrolled Forces.

2.1.18 "Member" means any member of NCPA or associate member of NCPA who is a signatory to the Joint Powers Agreement.

2.1.19 "NCPA" has the meaning set forth in the preamble hereto.

2.1.20 "NERC" means the North American Electric Reliability Corporation, or its successor.

2.1.21 "Operating Entity" means an entity that determines the use of and coordinates scheduling of their load, resources, imports and exports, trades, ancillary services or other CAISO products, in accordance with established scheduling requirements, including those requirements determined by NCPA.

2.1.22 "Party" or "Parties" has the meaning set forth in the recitals hereto; provided that "Third Parties" are entities that are not party to this Agreement.

2.1.23 "Phase 1" means the period of time Customer will commence providing service to customers within its service area, where such customers will primarily consist of the City of San Jose municipal accounts, as further described in Customer's Community Choice Aggregation Implementation Plan and Statement of Intent dated August 17, 2017.

2.1.24 "Phase 2" means the period of time Customer will commence providing services to additional customers within its service area, where such customers will include Phase 1 customers and additional customers, including, but not limited to, residential and small commercial customers, as further described in Customer's Community Choice Aggregation Implementation Plan and Statement of Intent dated August 17, 2017.

2.1.25 "Records" shall have the meaning set forth in Section 8.6 of this Agreement.

2.1.26 "Reliability Standards" means requirements approved by FERC under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system.

2.1.27 "Scheduling Agent" means an entity authorized to act as agent on behalf of a Scheduling Coordinator, and that performs certain Scheduling Coordinator duties and requirements on behalf of a Scheduling Coordinator.

2.1.28 "Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions of a Scheduling Coordinator specified in the CAISO Tariff, including, but not limited to, submitting and settling bids, self-schedules, and trades in the CAISO markets.

2.1.29 "Security Account" means an account established at NCPA pursuant to this Agreement. The Security Account is established to: (1) make timely payments to the CAISO under the CAISO Tariff, (2) provide working capital for NCPA's provision of Services and to bridge timing differences between the receipt of payments from Customer and the date payments are due to the CAISO, (3) satisfy CAISO security deposit requirements, if any, and (4) protect NCPA from potential Customer default by providing funds and time to cure.

2.1.30 "Services" have the meaning as set forth in Section 4.1 of this Agreement.

2.1.31 "Significant Operational Change" has the meaning as set forth in Section 15.18 of this Agreement.

2.1.32 "Significant Regulatory Change" has the meaning as set forth in Section 15.18 of this Agreement.

2.1.33 "Services Fee" means the amount Customer shall pay NCPA, as set forth in Section 7.1 of this Agreement, in consideration for NCPA's provision of all Services, other than Supplemental Services, to Customer, in accordance with the terms and conditions of this Agreement.

2.1.34 "Supplemental Services" shall have the meaning as set forth in Appendix A of this Agreement.

2.1.35 "Third Party" means an entity that is not a Party to this Agreement.

2.1.36 "Uncontrollable Forces" means storm, flood, lightning, earthquake, tsunami, fire, explosion, failure of facilities not due to lack of proper care or maintenance, civil disturbance, industry wide labor dispute, sabotage, war, national emergency, restraint by court or public authority, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or other causes beyond the control of the affected Party which such Party could not reasonably have been expected to avoid by exercise of Good Utility Practice, due diligence and foresight.

2.1.37 "WECC" means the Western Electricity Coordinating Council, or its successor(s).

2.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" means a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance are references to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a "day" means a Calendar Day unless otherwise specified. The singular includes the plural and the masculine includes the feminine, and vice versa.

**Section 3. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to set forth the terms and conditions under which NCPA will supply Customer with Services.

**Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE**

4.1 NCPA Duties. The duties of NCPA under this Agreement are to provide services to Customer as fully described in Appendix A hereto ("Services").

4.2 Customer Duties. The duties of the Customer under this Agreement are to:

4.2.1 Timely provide certain information to NCPA that is required for NCPA to perform Services, as fully described in Appendix A hereto.

4.2.2 Make timely payments to NCPA for all CAISO charges and credits for services invoiced by NCPA to Customer in accordance with Section 8 of this Agreement.

4.2.3 Provide staff and other assistance as may be required from time to time to the extent necessary for NCPA to fulfill its duties as described in Section 4.1 of this Agreement.

4.2.4 Comply with all requirements of the CAISO Tariff, as applicable, with respect to the operation and maintenance of its Electric System and other facilities covered under this Agreement.

4.2.5 Provide security or other deposits required by the CAISO, if any, to NCPA in accordance with Section 11 of this Agreement.

4.2.6 Initially fund and maintain sufficient deposits in its Security Account in accordance with Section 12 of this Agreement.

4.2.7 Make timely payment of all costs associated with NCPA's provision of Services, as set forth in this Agreement.

4.2.8 Defend and indemnify NCPA in regard to Services provided to Customer by NCPA.

4.2.9 Customer shall register as a Scheduling Coordinator and establish a Scheduling Coordinator account (commonly referred to as "SCID") to which the content of Customer's portfolio (including, but not limited to, loads, generation, trades, and/or other scheduled CAISO products) shall be transferred and/or migrated on or prior to March 31,

2019, whereby upon completing such transfer and/or migration Customer shall act as its own Scheduling Coordinator, and shall assign certain scheduling and settlement duties and responsibilities to NCPA, acting as Customer's Scheduling Agent.

4.3 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the Services in a competent and timely manner, in accordance with Good Utility Practices. NCPA shall perform all Services in accordance with the CAISO Tariff, and in accordance with the rules and requirements as may be adopted, approved and enforced by the California Energy Commission and the California Public Utilities Commission, as such rules and requirements may be applicable to the Services provided hereunder.

4.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

4.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 4.3, and to satisfy NCPA's obligations hereunder.

**Section 5. TERM AND TERMINATION**

5.1 Term. The initial term of this Agreement will begin on the Effective Date and will continue uninterrupted through August 31, 2020 (the "Initial Term"). At the end of the initial term of this Agreement, or any subsequent term of this Agreement, the term of this Agreement may be extended by Customer for an additional two (2) year period, or an alternative period of time as agreed to by the Parties, unless a Party provides written Notice of Termination pursuant to Section 5.2, of its election not to extend the term of the Agreement.

5.2 Termination. This Agreement may be terminated by Customer on or subsequent to the first anniversary of service by providing written notice to NCPA at least ninety (90) Calendar Days prior to the date on which service under this Agreement shall be terminated. For the purpose of clarity, the first anniversary of service provided under this agreement shall be August 31, 2019. This Agreement may be terminated by NCPA at the end of the Initial Term, or at the end of any subsequent term, by providing written notice to Customer at least one

hundred and eighty (180) Calendar Days prior to the end of the current term of the Agreement. A written notice of termination ("Notice of Termination") provided by either Party shall be provided to the other Party in accordance with Section 15.10 of this Agreement. Upon termination of this Agreement, NCPA shall return all Records to Customer within a reasonable period of time, and without any additional costs.

5.3 No Effect on Prior Liabilities. Termination of this Agreement will not terminate any ongoing or un-discharged liabilities, credits or obligations of the Parties, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or for which the Parties have provided a mechanism acceptable to the other Party, for the satisfaction in full thereof.

**Section 6. INDEMNITY**

6.1 Limitation of Liability. Neither NCPA nor Customer shall at any time be liable for any injury or damage occurring to the other, or any third person or property, from any cause whatsoever arising out of this Agreement. Each Party agrees to indemnify, defend and hold harmless the other Party, including their respective governing boards, officials, agents and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Party, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

6.2 Notice. The Parties agree to give each other prompt notice of the making of any claim or the commencement of any action, suit or proceeding covered by the provisions of this Section 6.

6.3 Notice of Tender. Each Party will provide the other Party prompt notice of any claim or liability that would trigger the obligation to indemnify and defend the other Party under Section 6.1. Any such notice must be in writing and delivered consistent with the notice provisions in Section 15.10.

**Section 7. COMPENSATION**

7.1 Compensation for Services. Customer shall pay NCPA the amounts set forth in Appendix B for NCPA's provision of Services to Customer in accordance with the terms and conditions of this Agreement. Such amount shall be billed to Customer in accordance with Section 8 of this Agreement.

7.2 CAISO Charges and Credits. All charges and credits invoiced by the CAISO to NCPA associated with Services provided under this Agreement will be charged or credited to Customer, without markup or deduction, and shall be paid to NCPA by Customer in addition to the compensation stated in Section 7.1. Such CAISO charges and credits will be billed to Customer in accordance with Section 8 of this Agreement.

**Section 8. BILLING AND PAYMENT**

8.1 Invoices. NCPA will issue a monthly invoice to Customer for estimated and actual CAISO charges and credits, costs associated with NCPA's provision of Services, and all other costs for Services (e.g., power supply costs) with no markup provided in accordance with this Agreement. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement. At NCPA's discretion, invoices may be issued to Customer using electronic media or physical distribution.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA to Customer are due and payable forty-five (45) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the next following Business Day. NCPA may apply Customer's Security Account to the payment of all or any portion of an invoice to Customer, provided that application of such funds from the Security Account will not relieve Customer from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by Customer, NCPA shall deposit

the relevant portion of the payment into the Security Account and credit such deposit to Customer. Emergency invoices delivered by NCPA shall be due and payable on the date indicated on such invoice, or as indicated in Section 12.5.

8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 will be considered late and will bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America N.A. then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

8.4 Billing Disputes. Customer may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless Customer agrees to pay the full amount billed when due for all costs other than amounts invoiced for the Services Fee, and Customer agrees to pay the full undisputed amount billed when due for the Services Fee. If Customer does not timely question or dispute the accuracy of any invoice in writing, or if NCPA does not identify a discrepancy in the invoice that requires a correction, the invoice will be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA will issue a corrected invoice and refund any amounts that may be due to Customer. If NCPA and Customer fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after Customer has disputed it, the General Manager will promptly submit the dispute to the Commission for resolution. If the Commission and Customer fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement. Provided, however, that prior to resorting to alternative dispute resolution procedures, the full amount of the disputed invoice for all costs other than amounts invoiced for the Services Fee must have been paid.

8.5 Billing/Settlement Data. NCPA must make billing and settlement data available to Customer as part of all invoices delivered by NCPA, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such

electronic data submission may be as established by the NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a reasonable non-disclosure agreement prior to providing access to the NCPA electronic data portal for the purpose of protecting confidential information, consistent with the provisions contained in Section 15.1 of this Agreement.

8.6 Examination of Books and Records.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files or other documents or material, in electronic or any other form (collectively "Records"), that NCPA prepares or obtains pursuant to this Agreement and that relate to the Services provided hereunder, shall be stored and maintained by NCPA in accordance with NCPA's records retention policies and procedures, as such may be modified from time to time; provided that NCPA shall retain the records relating to this Agreement for a minimum of three (3) years from the date of Customer's final payment to NCPA under this Agreement, or for any longer period required by law.

At any time during the term of this Agreement, or during the period of time that NCPA is required to retain Records under this Agreement, as set forth in Section 8.6, Customer may request, in writing, production of all or a portion of the Records. NCPA shall produce the Records within a reasonable amount of time at no additional cost to Customer.

**Section 9. COOPERATION AND FURTHER ASSURANCES**

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

**Section 10. DEFAULTS**

10.1 Events of Default. An Event of Default under this Agreement exists upon the occurrence of any one or more of the following by a Party (the "Defaulting Party"):

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.5) in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of Customer to make any payment of an emergency addition to the Security Account when due pursuant to Section 12.5;

(iii) the failure of a Party to perform any covenant or obligation of this Agreement, including the requirements of each Party set forth in Section 4, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from the other Party demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 10.1 (i) or (ii);

(iv) if any representation or warranty of a Party material to the Services provided hereunder shall prove to have been incorrect in any material respect when made and the Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from a Party demanding cure; or

(v) the occurrence of at least two (2) events that constitute a Material Adverse Effect.

10.2 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager, or in the case of Customer, to the representative selected by Customer, using telephone communication within one (1)

Business Day of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.3 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.1 above, as may be applicable.

10.4 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.1, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

(i) NCPA may suspend the provision of Services under this Agreement to Customer;

(ii) NCPA may demand that Customer provide further assurances to guarantee the correction of the default;

(iii) The non-defaulting Party may terminate this Agreement as to the defaulting Party, on ten (10) Calendar Days prior written notice to the Defaulting Party; or

(iv) NCPA may utilize the funds available in Customer's Security Account to cure and default under Section 10.1(i) and thereafter demand replenishment of the Security Account.

10.5 Special Covenants Regarding Security Account. In the event that Customer's Security Account is insufficient to cover all invoices for costs incurred under this Agreement delivered to Customer, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, Customer agrees to cooperate in good faith with NCPA and will work to cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary to replenish its Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

10.6 Effect of Termination or Suspension.

10.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

10.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA in accordance with Section 10.4 (i), Customer shall pay all reasonable and necessary costs incurred by NCPA as a result of such suspension.

10.6.3 Termination. If this Agreement is terminated by a Party in accordance with Section 10.4 (iii), the Defaulting Party shall pay all reasonable and necessary costs incurred by the other Party as a result of such termination.

**Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS**

Any credit requirements, including, but not limited to, security, collateral, unsecured credit, or other deposits required by the CAISO, shall be provided by Customer prior to NCPA providing Services under this Agreement, and shall be maintained as may be required thereafter pursuant to the CAISO Tariff. Failure to maintain sufficient credit, security, collateral, unsecured credit, or other deposits may impact NCPA's ability to perform certain Services under this agreement. NCPA shall maintain a detailed accounting of Customer's credit, security, collateral, unsecured credit or other deposits. Any changes in credit, security, unsecured credit or other deposits required by the CAISO Tariff may be provided by NCPA from

Customer's Security Account, and NCPA shall invoice Customer within two (2) Business Days for such required amounts, and will use the funds collected from Customer to fund the Security Account.

**Section 12. SECURITY ACCOUNT**

Any Customer deposits into the Security Account pursuant to this Agreement must be separate from and in addition to any security accounts maintained pursuant to any other agreements between NCPA and the Customer, NCPA and any Third Person, or any other such security account required of Customer.

12.1 Applicability. The requirement for Customer to initially deposit and maintain a Security Account pursuant to Section 12.2 and Section 12.3 is only applicable if NCPA, acting for or on behalf of Customer, is directly responsible for making payments to the CAISO and processing charges and credits invoiced by the CAISO to NCPA, associated with Services provided under this Agreement, including all charges and credits associated with security deposits as may be required pursuant to the CAISO Tariff. For the purpose of clarity, when NCPA provides Services as Customer's Scheduling Coordinator, Section 12.2 and Section 12.3 shall apply; provided, however, when NCPA provides Services as Customer's Scheduling Agent, Customer shall not be required to initially deposit and maintain a Security Account pursuant to Section 12.2 and Section 12.3 if Customer retains the direct responsibility for making payments to the CAISO and processing charges and credits invoiced by the CAISO to Customer, associated with Services provided under this Agreement, including all charges and credits associated with security deposits as may be required pursuant to the CAISO Tariff.

12.2 Initial Amounts. Prior to NCPA providing Services, Customer must deposit into a Security Account held by NCPA an amount equal to the highest three (3) months of estimated CAISO invoices (including, but not limited to, costs such as energy costs, Grid Management Charge fees, operating reserves costs, and regulation capacity costs) for the succeeding twelve (12) months; provided, however, that such deposit may be satisfied in whole or in part either in cash or through a clean, irrevocable letter of credit satisfactory to the General Manager. NCPA must maintain a detailed accounting of Customer's deposit in the Security Account. For the

purpose of clarity, the estimated CAISO invoice amount, as referred to herein, must be equal to Customer's Estimated Aggregate Liability (EAL).

12.3 Subsequent Deposits. Periodically, and at least quarterly, NCPA will review and revise its estimate of all costs Customer will be obligated to pay under this Agreement. Following such review, NCPA shall determine whether Customer has a sufficient balance in the Security Account. To the extent that Customer's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required by Section 12.2, NCPA will credit such amount as soon as practicable to Customer's next monthly invoice. To the extent that Customer's balance in the Security Account is less than ninety percent (90%) of the amount required by Section 12.2, NCPA shall add such amount as soon as practicable to Customer's next monthly invoice, or as necessary, to a special invoice to Customer. Credits or additions shall not be made if Customer satisfies these Security Account requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit is adjusted by Customer as necessary in a like manner to assure an amount equal to the highest three (3) months of CAISO invoices is available to NCPA.

12.4 Use of Security Account Funds.

12.4.1 NCPA may use any and all funds deposited into the Security Account (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, irrespective of whether NCPA has issued an invoice for such costs to Customer or whether Customer has made timely payments of invoices. Should Customer satisfy its Security Account requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy obligations hereunder.

12.4.2 If funds deposited into the Security Account, or provided through a letter of credit, are used by NCPA to pay any costs it incurs hereunder, NCPA, pursuant to Section 8.5, will maintain a detailed accounting of Customer's shares of funds withdrawn from the Security Account or letter of credit.

12.5 Emergency Additions. In the event that the funds are withdrawn pursuant to Section 12.4 of this Agreement, or if the Security Account is insufficient to allow payment of a

CAISO invoice, NCPA shall notify Customer and then prepare and send a special or emergency assessment to Customer. Customer shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Customer has established for such purposes.

12.6 Accounting and Interest. NCPA must maintain a detailed accounting of Customer's deposits into and withdrawals from the Security Account. Interest, if any, earned on the Security Account shall be credited to Customer's Security Account. NCPA makes no representation that the Security Account will earn any particular amount of interest or any interest.

12.7 Return of Funds. On the termination of this Agreement Customer's Security Account funds shall be paid to Customer thirty (30) Calendar Days after the effective date of such termination. NCPA will, in its reasonable discretion, as determined by the General Manager, estimate the then outstanding liabilities of Customer, including any estimated contingent liabilities, and will retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. After such determination by the General Manager, the balance of Customer's Security Account will be refunded to Customer within thirty (30) Calendar Days.

**Section 13. SETTLEMENT OF DISPUTES**

13.1 Settlement of Disputes. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Customer and NCPA agree to resolve the dispute in accordance with the following:

13.1.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute.

13.1.2 The representative shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

13.1.3 If the issue remains unresolved after sixty (60) Calendar Days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

13.1.4 This informal resolution process is not intended to nor shall be construed to change the time periods for failing a claim or action specified by Government Code § 900, *et seq.* for any claims that may be subject to the California Tort Claims Act.

**Section 14. STATUS OF NCPA**

At all times during the term of this Agreement, NCPA will be an independent contractor and will not be an employee of Customer. Customer will have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement; however, otherwise Customer will have no right to control the means by which NCPA accomplishes Services rendered under this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing Services under this Agreement will not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Customer, including but not limited to Customer's retirement benefits or workers compensation benefits.

**Section 15. MISCELLANEOUS**

15.1 Confidentiality. To the maximum extent allowed by law, including the Public Records Act, the Parties agree to keep confidential all confidential or trade secret information made available to them in connection with this Agreement. Confidential or trade secret information must be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information. In such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party's attempts to protect from disclosure the information; or

(ii) that the Receiving Party may disclose the information.

15.2 Survival of Obligations. The defense and indemnity obligations of Section 6 shall survive the termination of this Agreement.

15.3 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL A PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

15.4 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement will be effective unless given by the other Party. Any such waiver by the other Party in any particular instance will not be deemed a waiver with respect to any subsequent performance, default or matter.

15.5 Amendments. Unless otherwise provided for in this Agreement, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.5.1 Amendments of Appendices. The Appendices that are attached to and made part of this Agreement include detailed principles, descriptions and procedures for NCPA's provision of Services to Customer. Upon mutual written consent of the Designated Representative of each Party, the Appendices of this Agreement may be amended from time to time, without the requirement of an approval as required pursuant to Section 15.5; provided, however, Appendix A and Appendix B may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.6 Assignment of Agreement.

15.6.1 Binding Upon Successors. This Agreement, including the Appendices attached hereto, inure to the benefit of and will be binding upon the respective successors and assignees of the Parties to this Agreement.

15.6.2 No Assignment. This Agreement, nor any interest herein, may be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

15.7 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, are held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application will not be affected thereby, but will remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

15.8 Governing Law. This Agreement must be interpreted, governed by, and construed under the laws of the State of California.

15.9 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

15.10 Notices. Any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered to the person specified below (the "Designated Representative"):

NCPA:
David Dockham
Assistant General Manager, Power Management
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
E-mail: dave.dockham@ncpa.com

Customer: City of San Jose
Name: Lori Mitchell
Title: Director
Address: 200 East Santa Clara Street, 14th Floor
San Jose, CA 95013
E-mail: Lori. Mitchell@Sanjoseca.gov

All notices shall be deemed delivered when personally delivered, three (3) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication. A Party may change its Designated Representative by providing notice to the other Party, and such change shall not constitute an amendment to this Agreement.

15.11 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

15.12 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California

in the County of Santa Clara or in the United States District Court for the Northern District of California.

15.13 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party will be responsible for its own fees and costs, including attorneys' fees, associated with the action.

15.14 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 6 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

15.15 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor will any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor will any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

15.16 Integration; Incorporation. This Agreement, including all the appendices attached hereto, represents the entire and integrated agreement between Customer and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All appendixes attached hereto are incorporated by reference into this Agreement.

15.17 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA may be both individually responsible for compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC

and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC.

15.18 Significant Regulatory Change or Operational Change.

15.18.1 A "Significant Regulatory Change" will be deemed to occur if FERC, the CPUC, the CAISO or any other court, public authority, governmental, or other lawfully established civilian authorities having jurisdiction, issues an order or decision or adopts or modifies a tariff or filed contract, or enacts a law that materially interferes with the ability of either Party to perform any of its obligations under this Agreement.

15.18.2 A "Significant Operational Change" will be deemed to occur due to (i) material amendments or revisions to any tariffs, contracts or other applicable documents referenced in this Agreement that directly affect a Party's obligations under this Agreement, (ii) an action taken by the Balancing Authority that may have a material detrimental impact on the way a Party operates or must operate its Electric System, or that directly affects a Party's obligations under this Agreement, or (iii) a significant change in Customer's supply and demand portfolio that may result in material increase in the scale and scope of services contemplated at the Effective Date of this Agreement (e.g., Customer's load increased more than fifteen (15) percent).

15.18.3 Notification of Significant Regulatory Change or Operational Change. At any time during the term of this Agreement, if any Party anticipates the occurrence of a Significant Regulatory Change or Significant Operational Change that may reasonably be expected to materially interfere with the ability of any Party to perform any of its obligations under this Agreement, or such Significant Regulatory Change or Significant Operational Change occurs, such Party will provide written notice to the other Party as soon as practicable. The notice must contain a description of the Significant Regulatory Change or Significant Operational Change, including expected time schedules, and of the effect of the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it

has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties agree to promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change.

15.18.4 Amendment of Agreement. If the Parties agree that an amendment to this Agreement is necessary to address a Significant Regulatory Change or Significant Operational Change, the Parties will proceed to negotiate such amendment in good faith. If the Parties have not reached agreement within one hundred and twenty (120) Calendar Days of the date of the first meeting, either Party may terminate this Agreement upon one hundred and eighty (180) Calendar Days prior written notice provided to the other Party.

IN WITNESS WHEREOF, NCPA and Customer have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

**Northern California Power Agency**

RANDY S. HOWARD, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

**City of San Jose**

5/7/18

Leland Wilcox
Chief of Staff
Office of the City Manager

Approved as to Form:

**APPENDIX A**

**SCOPE OF SERVICES**

All services provided by NCPA to Customer pursuant to this Agreement are described in this Appendix A (collectively referred to herein as "Services").

**Section 1. SCHEDULING SERVICES**

As of the Effective Date of this Agreement, NCPA shall act as Customer's Scheduling Coordinator until the earlier of either: (i) the date on which Customer has completed the process of transferring and/or migrating the content of its portfolio (including, but not limited to, loads, generation, trades, and/or other scheduled CAISO products) from a Scheduling Coordinator account (commonly referred to as "SCID") registered by NCPA, to a Scheduling Coordinator account registered by Customer, or (ii) March 31, 2019. At such time, Customer shall then act as its own Scheduling Coordinator, and shall assign certain scheduling and settlement duties and responsibilities to NCPA, acting as Customer's Scheduling Agent, as further described in Appendix A hereto; provided, however, if Customer has not completed the process of transferring and/or migrating the content of its portfolio to a Scheduling Coordinator account registered by Customer on or prior to March 31, 2019, NCPA shall have the right, but not the obligation, to terminate this Agreement, as set forth in Section 5.2 of this Agreement.

1.1 Description of Service. NCPA shall provide scheduling services ("Scheduling Services") to Customer, acting as Customer's Scheduling Coordinator or Scheduling Agent, as further set forth herein, in accordance with this Agreement, the CAISO Tariff, and other rules and requirements, as applicable. Scheduling Services include the following duties, and are furthermore described in Appendix C of this Agreement:

1.1.1 NCPA, in coordination with Customer, will facilitate Customer's Scheduling Coordinator registration with the CAISO. NCPA will assist Customer with managing the various steps that are required to complete all of the Scheduling Coordinator certification requirements set forth in the CAISO Tariff and Business Practice Manuals.

1.1.2 NCPA will assist Customer with the process of transferring Customer's resources from the Scheduling Coordinator account in which they currently reside, if any, to either NCPA's Scheduling Coordinator account, or Customer's Scheduling Coordinator account.

1.1.3 Development and submission of schedules and Bids for Customer's loads, resources, trades, ancillary services and/or other CAISO products in the CAISO energy and ancillary services markets, or other markets, as applicable. All schedules and Bids will be made and submitted to the CAISO in accordance with Appendix C and the CAISO Tariff, or other balancing authority areas in accordance with the applicable rules and requirements. Customer's owned and operated generation facilities, if any, for which NCPA supplies Scheduling Services on behalf of are listed in Appendix E.

1.1.4 NCPA shall perform outage coordination and management for Customer's generating resource planned and unplanned outages in accordance with applicable rules and requirements, including, but not limited to, the CAISO Tariff and associated operational procedures.

1.1.5 Obtain and maintain settlement quality meter data in accordance with the CAISO Tariff, the MSA CAISO ME or MSA SC, as applicable, to be used for multiple purposes, including, but not limited to forecasting and settlement validation. For the purpose of clarity, Customer intends to acquire, or has acquired, the services of a Third Party supplier to provide and/or perform meter data management services on behalf of Customer. Meter data management services include, but are not limited to, collection of meter data, validation of meter data, profiling and formatting of meter data, and development and submission of Settlement Quality Meter Data to the CAISO in accordance with the requirements of the CAISO Tariff. Metering services provided by NCPA, as contemplated herein, are limited to collecting the processed Settlement Quality Meter Data from and/or through applicable access, as provided by the CAISO (e.g., querying data from the CAISO MRI-S software application), storing such data, and using the data for the

purpose of forecasting and validating CAISO settlement charges and credits attributed to Customer's activities.

1.1.6 Submit regulatory data to appropriate Balancing Authorities by defined deadlines, including Resource Adequacy supply plans and compliance filings.

1.1.7 Develop, submit and management of E-Tags for Customer interchange transactions.

1.1.8 Review, validate, and reconcile CAISO settlement charges and credits for services, file timely disputes and pursuant dispute resolution.

**Section 2. CONTROL CENTER SERVICES**

2.1 Description of Service. NCPA shall provide control center services ("Control Center Services") for Customer's owned and operated generation facilities (if any) for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix D of this Agreement:

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

2.1.3 Monitor real time telemetry, data flow and manage system data.

2.1.4 Call-out field and emergency service personnel in response to certain operational conditions.

2.1.5 Operational coordination, communication, monitoring and equipment clearance and switching with Customer's generation facility personnel and Third Parties.

2.1.6 Monitor alarms and operate Customer generation facilities in accordance with any applicable Operating Procedures and requirements, as may be set forth in Appendix D, including regulatory and/or environmental requirements.

2.1.7 Comply with the Customer Emergency Action Plan ("EAP"), and initiating the EAP as required.

**Section 3. PORTFOLIO MANAGEMENT AND OPTIMIZATION SERVICES**

3.1 Description of Services. NCPA shall provide portfolio management and optimization services ("Portfolio Management and Optimization Services") to Customer pursuant to this Agreement. Portfolio Management and Optimization Services include the following duties:

3.1.1 Acting as an Operating Entity on behalf of Customer.

3.1.2 Providing pre-scheduling and real-time optimization services (including development of bidding strategies) for Customer's loads and resources.

3.1.3 Performing long term, medium term and short term resource planning and optimization on behalf of Customer.

3.1.4 Development and management of load and resource balance information; providing transactional recommendations in coordination with planning and risk management strategies adopted by Customer.

3.1.5 Focused industry restructuring and advocacy support within the CAISO stakeholder initiative process, in support of Customer's planning and optimization activities; provided, however, NCPA is not authorized to directly advocate and/or assume policy positions, on behalf of Customer, that are inconsistent with and/or in conflict with policy positions and/or objectives of NCPA's Members.

3.1.6 Entering into Balance of Month Transactions for purchasing and selling energy, capacity, transmission capacity, and other related services and products on behalf of Customer.

3.1.7 Monitor and analyze contract requirements, and provide recommendations and other advice to Customer regarding strategies for maximizing the benefits of such contracts.

3.1.8 Provide support with development of master agreements and other transacting instruments.

3.1.9 Coordination of daily and intra-daily operational communications with Customer's operational counterparts, including coordination with Customer's meter data management agent.

3.1.10 Performing transactional and bilateral checkouts and settlements for physical and financial energy, and energy related product transactions, and initiating and processing related disputes.

3.1.11 Perform load forecasting and provide accurate real time, hour ahead, day ahead, week ahead, and month ahead load forecasts to Customer.

3.1.12 Provide monthly forecast reconciliation reports comparing forecast to actual electric usage, and update forecasting models, as required, to reduce systematic forecasting errors.

3.1.13 Submit Congestion Revenue Rights nominations and bids, acting as Customer's agent, and provide quarterly effectiveness reports.

3.1.14 Develop and provide performance reports and operational reports to Customer, and provision of interval and summary data through use of web based portal interface.

3.1.15 Develop and provide risk management services, including development of risk management policies and regulations, strategies, and reporting tools.

**Section 4. INFORMATION REQUIREMENTS**

4.1 Information Requirements. To enable NCPA to perform the duties associated with Services provided to Customer in accordance with this Agreement, Customer shall timely provide the following information, instructions, and communications to NCPA (as applicable):

4.1.1 Meter Data. Customer shall provide NCPA access to settlement quality meter data from loads and resources scheduled and Bid by NCPA for Customer under this Agreement, and to maintain such meters and metering equipment in accordance with the standards and requirements as set forth in the CAISO Tariff.

4.1.2 Operational Data. Customer shall provide NCPA access to certain real-time operational systems and information (as mutually determined by NCPA and Customer) including, but is not limited to: (i) Supervisory Control and Data Acquisition ("SCADA") systems, (ii) Programmable Logic Controllers ("PLC"), and (iii) Real-time telemetry and recording devices.

4.1.3 Scheduling and Operating Procedures. NCPA shall prepare, and Customer shall approve, written scheduling procedures ("Scheduling Procedures") and operating procedures ("Operating Procedures") related to Customer loads and generation resources that convey Customer's guidelines for how NCPA is to perform certain Scheduling Services and Control Center Services under this Agreement, and included at such time as Appendix C and Appendix D, respectively. Such Scheduling Procedures and Operating Procedures shall be agreed to sufficiently in advance of their application so as to reasonably enable NCPA to perform such activities.

**Section 5. SUPPLEMENTAL SERVICES IN ACCORDANCE WITH TASK ORDER PROCESS**

5.1 Description of Service. NCPA may, at its sole discretion, provide certain technical support services, or other advisory services, to Customer upon mutual written agreement between the Parties ("Supplemental Services"). All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the task order process described in Appendix F ("Task Order Process").

5.2 Compensation for Supplemental Services. Costs for NCPA's provision of Supplemental Services shall be charged to Customer on a time and materials basis. Pursuant to Section 7.1 of this Agreement, in consideration of NCPA's provision of Supplemental Services, Customer shall pay NCPA the sum of: (i) an amount equal to the number of hours required to complete each respective task, multiplied by the applicable hourly rate listed in the Supplemental Services Rate Schedule contained in Appendix B, and (ii) out of pocket expenses and the cost of materials. The scope of each Supplemental Service shall be specified in each respective task order ("Task Order Request") developed by the Parties pursuant to the Task Order Process.

**Section 6. SERVICE TRANSITION**

The Parties acknowledge that prior to the date on which specific Services shall be supplied by NCPA for a specific Customer load and/or generating resource, the Parties may be required perform certain work and other activities to establish and enable the systems and processes that are required to perform Services as of the date on which Services for a specific Customer load and/or generating resource is to commence. Such activities may include establishing common business practices, developing business requirements, establishing connectivity of systems and equipment, coordinated training of staff, and other activities that may be required to enable NCPA to provide, and Customer to receive, Services. During this transition period (the "Transition Period"), the Parties agree to cooperate in good faith to establish and enable the systems and processes that are required to perform Services. All activities to be performed by NCPA during the Transition Period are included as part of the comprehensive Services provided to Customer, pursuant to this Agreement, even though such work and activities may be performed by NCPA prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource.

**APPENDIX B**

**COMPENSATION SCHEDULE**

Pursuant to Section 7.1 of this Agreement, Customer shall pay NCPA the amounts listed in this Appendix B (the "Compensation Schedule") in consideration for Services provided under this Agreement.

**Section 1. COMPENSATION SCHEDULE**

1.1 In consideration for NCPA's provision of all Services, except Supplemental Services, Customer shall pay NCPA the amount set forth in Section 1.1 of this Appendix B for Services rendered during the first one (1) year period in which NCPA is supplying Services to Customer. For the purpose of clarity, the first one (1) year period shall begin on September 1, 2018, and shall continue through August 31, 2019.

1.1.1 During the first one (1) year period of this Agreement, for the period beginning on September 1, 2018, and continuing through the date on which Customer implements Phase 2 of its implementation plan (the "Phase 1 Period"), Customer shall pay NCPA an amount equal to Twenty Five Thousand Dollars ($25,000.00) for Services rendered during each month of the Phase 1 period; and

1.1.2 During the first one (1) year period of this Agreement, for the period beginning on the date on which Customer implements Phase 2 of its implementation plan through August 31, 2019 (the "Phase 2 Period"), Customer shall pay NCPA an amount equal to Fifty Two Thousand Five Hundred Dollars ($52,500.00) for Services Rendered during each month of the Phase 2 period.

If the date on which NCPA begins supplying Scheduling Services to Customer occurs after September 1, 2018, the compensation schedule listed herein for the first one (1) year period shall be adjusted based on the actual date on which NCPA begins supplying Scheduling Services to Customer. For example, if NCPA begins supplying Scheduling Services to Customer of October 1, 2018, the period associated with the Phase 1 Period will be adjusted according.

1.2 For each subsequent one (1) year period of the term of this Agreement, Customer shall pay NCPA an amount equal to: (i) the sum of the annual amount charged to Customer during the prior year escalated at a rate of two percent (2%) per year; provided, however, for the one (1) year period immediately following the first one (1) year period, the amount of compensation used to perform the calculation described in Section 1.2 of Appendix B shall be $630,000.00, even if such amount is prorated during the first one (1) year period, as further described in Section 1.1 of Appendix B.

1.3 Unless otherwise provided herein, such annual amounts shall be billed to Customer in twelve (12) equal monthly installments, in accordance with Section 8 of this Agreement.

**Section 2. SUPPLEMENTAL SERVICES**

2.1 Pursuant to Section 5 of Appendix A, NCPA may provide Supplemental Services to Customer. All costs charged to Customer for Supplemental Services are separate from and in addition to the compensation paid for all other Services, as set forth in Section 1 of this Appendix B. The following is the hourly rate schedule applicable to Supplemental Services ("Supplemental Services Rate Schedule"):

**SUPPLEMENTAL SERVICES RATE SCHEDULE**

| Job Classification | CY 2017 Hourly Rate ($/Hr.) |
|---|---|
| Accountant/Analyst I-III | $ 150.00 |
| Administrative Assistant I-III | $ 90.00 |
| Assistant General Manager | $ 300.00 |
| Computer Tech Analyst I-IV | $ 170.00 |
| Sr. Computer Tech Analyst | $ 180.00 |
| Risk Manager | $ 180.00 |
| Compliance Manager | $ 230.00 |
| Engineer/Energy Resource Analyst I-IV | $ 180.00 |
| Mgr. Information Svcs. and Power Settlements | $ 240.00 |
| Power Settlements Analyst | $ 160.00 |
| Power Settlements Manager | $ 210.00 |
| Scheduler/Planner | $ 180.00 |
| Supervisor I-III | $ 230.00 |

This rate schedule may be amended from time to time, but in no event more than one time annually, by NCPA as its costs of labor increase, and may add, subtract or amend job classification titles (and their respective hourly rates) as its job classification schedule is amended. NCPA shall provide written notice to Customer of any such amendment prior to charging any increased rate.

| NCPA NORTHERN CALIFORNIA POWER AGENCY | **Power Management Procedure**<br>**SJCE–PM–401** |
|---|---|
| Ver. 1 | **Scheduling and Bidding** |
| Prepared By: Tony Zimmer | Date Issued: 09/01/2018 |

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## 1. PURPOSE

1.1. The purpose of this procedure is to provide guidance to NCPA scheduling and operational staff, and SJCE staff, regarding the process to be used to schedule and bid SJCE's demand and supply in the CAISO day-ahead and real-time markets, and to ensure that SJCE's demand and supply are scheduled and operated in accordance with all applicable operating limits and requirements.

1.2. This procedure is developed to be read in coordination with the Agreement, but is not intended to supersede and/or replace any provision of the Agreement; therefore, in the event of any conflict between any provisions including in this procedure and the Agreement, the Agreement shall govern.

## 2. SCOPE

2.1. The scope of this procedure applies to applicable NCPA scheduling and transactional staff, and SJCE staff, and includes details pertaining to scheduling and communication timelines, transactional authority, and design and implementation of scheduling and bidding strategies for SJCE's demand and supply, and coordination of scheduling and bidding strategies with the NDC personnel, SJCE staff, and third parties.

## 3. REFERENCES

3.1. CAISO Tariff and Business Practice Manuals.

## 4. DEFINITIONS

| | | |
|---|---|---|
| 4.1. | Agreement | Services Agreement between NCPA and SJCE |
| 4.2. | CAISO | California Independent System Operator |
| 4.3. | SJCE | San Jose Clean Energy |
| 4.4. | NCPA | Northern California Power Agency |
| 4.5. | NDC | NCPA Dispatch Center |

## 5. RESPONSIBILITIES

5.1. Management.

5.1.1. NCPA and SJCE management are responsible for ensuring that their respective employees are familiar with the purpose of this procedure. NCPA management will review this procedure, as needed, to ensure the procedure remains consistent with current business practices. If the requirements for this procedure change as a result of such review, NCPA management will instruct their respective employees to make necessary changes to the procedure within thirty (30) days, followed by the review and approval of the same.

5.2. Employees.

5.2.1. All NCPA scheduling, operational, and transactional staff, and SJCE staff, who are subject to the requirements of this procedure, shall be familiar with, and adhere to the polices, practices, and procedures set forth in this document and the Agreement.

## 6. PROCEDURE

6.1. Coordination and Communications.

6.1.1. SJCE staff shall promptly notify NCPA in advance of any new or material changes to its supply portfolio, including, but not limited to, additions to, retirements of, or any changes in generation, power supply contracts, transmission resources, or other supply sources which can affect SJCE's current or future load and resource balance, or NCPA's obligations to acquire sufficient supply to service SJCE's demand in the Balance-of-Month timeframe.

6.1.2. NCPA, in coordination with SJCE, shall develop and supply a load and resource balance report at least quarterly to SJCE, using demand and supply forecasts developed by NCPA. The load and resource balance information shall be utilized by NCPA to guide NCPA's portfolio management activities, including, but not limited to, supply investment and transactional activities, to maintain reliability of service, and to strive to obtain the maximum overall economies on behalf of SJCE.

6.2. Forecasting.

6.2.1. Using certain input variables, including, but not limited to, historic demand, weather information, economic and demographic data, and impacts of energy efficiency, NCPA staff will develop a month-ahead, week-ahead, day-ahead, hour-ahead, and real-time demand forecast for SJCE. Such forecasts will be used for both planning and operational purposes. For example, the month-ahead forecast will be used to develop a pre-month scheduling and optimization plan for SJCE.

6.2.2. The process used to develop forecasts, and the types of data used to develop forecasts, shall remain dynamic in nature and may deviate from time to time to ensure the forecast is adjusted to reflect current market conditions. As such, the data requirements for development of the forecast may be adjusted in coordination with SJCE staff periodically. NCPA staff shall coordinate with SJCE staff at least quarterly to review the current methodology used to develop the forecasts, and to identify what input variables SJCE staff may need to supply to NCPA staff to ensure the accuracy of the forecast.

6.2.3. NCPA shall provide a monthly forecast reconciliation report to SJCE to compare the forecasts to actual demand usage, and shall update the forecasting models, as required, to reduce systematic forecasting errors.

6.3. Day-Ahead Market Scheduling.

6.3.1. NCPA shall develop and submit schedules and Bids for SJCE's demand and supply into the CAISO day-ahead market. All schedules and Bids shall be transmitted and submitted to the CAISO in accordance with the applicable scheduling timelines and scheduling formats, as set forth in the CAISO Tariff and Business Practice Manuals, using software and/or tools owned, operated, and maintained by NCPA.

6.3.2. Schedules and Bids submitted into the CAISO day-ahead market, on behalf of SJCE, will be developed in accordance with the following general guidelines/strategies:

6.3.2.1. NCPA shall self-schedule SJCE's hourly load based on a forecast developed by NCPA. In accordance with the CAISO Tariff, load can only be scheduled into the CAISO day-ahead market, and cannot be adjusted or supplemented as part of the CAISO real-time market process.

6.3.2.2. NCPA shall schedule all Inter-SC Trades, as applicable, in coordination with the responsible counterparty, consistent with the terms and conditions as may be set forth in the applicable transaction confirmation. If during the scheduling process, an Inter-SC Trade scheduled by NCPA does not pass initial validation associated with the requirement for matched trades, NCPA's scheduling staff will coordinate with the responsible counterparty and strive to identify and resolve any outstanding deficiencies.

6.3.2.3. NCPA shall self-schedule and/or submit economic Bids for interchanges transactions (imports or exports), and shall develop, submit and manage all corresponding E-Tags that may be required to process such interchange transactions.

6.4. Real-Time Market Scheduling.

6.4.1. NCPA shall develop and submit schedules and Bids for SJCE's demand and supply into the CAISO real-time market. All schedules and Bids shall be transmitted and submitted to the CAISO in accordance with the applicable scheduling timelines and scheduling formats, as set forth in the CAISO Tariff and Business Practice Manuals, using software and/or tools owned, operated, and maintained by NCPA.

6.4.2. Schedules and Bids submitted into the CAISO real-time market, on behalf of SJCE, will be developed in accordance with the following general guidelines/strategies:

6.4.2.1. NCPA shall schedule all Inter-SC Trades, as applicable, in coordination with the responsible counterparty, consistent with the terms and conditions as may be set forth in the applicable transaction confirmation. If during the scheduling process, an Inter-SC Trade scheduled by NCPA does not pass initial validation associated with the requirement for matched trades, NCPA's scheduling staff will coordinate with the responsible counterparty and strive to identify and resolve any outstanding deficiencies.

6.4.2.2. NCPA shall self-schedule and/or submit economic Bids for interchanges transactions (imports or exports), and shall develop, submit and manage all corresponding E-Tags that may be required to process such interchange transactions.

6.5. Balance-of-Month Transactions.

6.5.1. NCPA is authorized to purchase and sell energy, capacity, ancillary services and transmission on behalf of SJCE and thereby will strive to economically service SJCE's demand, and meet other applicable service/regulatory obligations. NCPA is authorized to enter into purchase and sale transactions, under its own name, for a term of balance of month or less, including, but not limited to, transactions in the day-ahead/prescheduling period (pursuant to the WECC Scheduling Calendar), intra-day period, and real-time period for energy, capacity, ancillary services and transmission on behalf of SJCE.

6.5.2. All Balance-of-Month transactions consummated by NCPA, on behalf of SJCE, in accordance with the Agreement shall satisfy the following conditions:

6.5.2.1. All transactions shall be made in accordance with all requirements and conditions set forth in NCPA's Energy Risk Management Policy and Energy Risk Management Regulations, including, but not limited to, those limiting the term and volume of transactions made by NCPA; and

6.5.2.2. To the extent applicable, all transactions shall be made in accordance with all requirements and conditions set forth in the risk management policies and/or regulations adopted by SJCE; and

6.5.2.3. All transactions shall be limited to those Approved Products listed in NCPA's Energy Risk Management Policy and Energy Risk Management Regulations; and

6.5.2.4. All transactions undertaken by NCPA, pursuant to the Agreement, may only be initiated using one or more of the approved transaction instruments ("Transaction Instruments") as listed herein.

6.5.3. Approved Transaction Instruments that may be used to consummate transaction pursuant to the Agreement including the following:

6.5.3.1. WSPP Agreement
6.5.3.2. EEI Master Power Purchase and Sale Agreement
6.5.3.3. Bilateral Agreements, pending prior SJCE approval of contract structure

6.6. Acquisition of GHG Compliance Instruments.

6.6.1. NCPA shall acquire GHG Compliance Instruments to satisfy any GHG compliance obligations that result from NCPA's provision of services under the Agreement, including, but not limited to, the purchase and sale of interchange transactions (energy imports and exports), to the extent such GHG Compliance Instruments are not otherwise supplied to NCPA by SJCE. All direct costs associated with the acquisition of GHG Compliance Instruments shall be charged to SJCE in accordance with the Agreement.

## 7. REPORTS

7.1. Day-Ahead and Real-Time Market Results.

7.1.1. NCPA shall develop and publish a report identifying all schedules and Bids submitted into the CAISO day-ahead and CAISO real-time market on behalf of SJCE, and the awards issued and published by the CAISO resulting from the schedules and Bids submitted. This information will be published on the NCPA Connect Collaboration Workspace in summary form, and all detailed interval level information will be made available for SJCE staff access using the NCPA Data Portal.

7.2. Settlements.

7.2.1. NCPA shall publish all SJCE CAISO invoices/settlement statements on the NCPA Connect Collaboration Workspace.

7.2.2. NCPA shall develop and publish a SJCE settlement details report on the NCPA Connect Collaboration Workspace, which will include summary information describing all of the charges and credits included in each applicable CAISO invoice.

7.2.3. NCPA shall publish all settlement information and detail associated with CAISO charges and credits included in each CAISO settlement statement, and all

detailed interval and charge code level information will be made available for SJCE staff access using the NCPA Data Portal.

7.3. Resource Adequacy.

7.3.1. All SJCE compliance materials associated with applicable Resource Adequacy requirements, including, but not limited to, Resource Adequacy Plans, Resource Adequacy Supply Plans, and forecasts, shall be published on the NCPA Connect Collaboration Workspace.

## 8. CONTACTS

8.1. NCPA Staff Contact Information.

- Scheduling and Operations
  - Prescheduling@ncpa.com
  - Jesse Shields (Prescheduler): 916-781-4227; jesse.shields@ncpa.com
  - Phil Mensonides (Prescheduler): 916-781-4228; phil.mensonides@ncpa.com
  - Ken Goeke (Scheduling Supervisor): 916-781-4290; ken.goeke@ncpa.com
  - Dispatch Console (Operations): 916-781-4237; dispatch@ncpa.com
  - Scheduling Coordinators: 916-781-4381; SC2@ncpa.com

- Contract Administration
  - Tony Zimmer: 916-781-4229; tony.zimmer@ncpa.com

## 9. ATTACHMENTS

9.1. Attachment 1 – WECC Scheduling Calendar

## 10. VERSION HISTORY

| No. | Explanation | Date | By |
|---|---|---|---|
| | | | |
| 1 | New Procedure | 09/01/2018 | Tony Zimmer |

## 11. DISTRIBUTION

| Location | Copies |
|---|---|
| NCPA Dispatch Center | 1 |
| NCPA DRC | 1 |
| SJCE | 1 |
| NCPA Connect Collaboration Workspace | 1 |

**ATTACHMENT 1**
**2018 WECC SCHEDULING CALENDAR**

2018 WECC SCHEDULING CALENDAR

**APPENDIX D**

**OPERATING PROCEDURES**

The Operating Procedures are separately attached to this Agreement as Appendix D.

**RESERVED**

**APPENDIX E**

**CUSTOMER RESOURCES**

The following is a list of Customer's resource for which NCPA provides Services pursuant to this Agreement.

**RESERVED**

**APPENDIX F**

**TASK ORDER PROCESS**

Pursuant to Section 5 of Appendix A, NCPA may, at its sole discretion, provide certain Supplemental Services to Customer. All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the Task Order Process described in this Appendix F.

**Section 1. Task Order Process**

1.1 Submission of a Task Order. Customer may submit a Task Order Request for Supplemental Services to NCPA in accordance with the terms and conditions of this Agreement. All Supplemental Services requests shall be submitted to NCPA in writing using the task order request form attached to this Appendix F ("Task Order Request Form"). In the Task Order Request Form, Customer shall provide a description of the desired Supplemental Services, a time frame on which Customer is seeking such Supplemental Services to be completed, and all other relevant details that may assist NCPA's review and consideration of the Task Order Request.

1.2 Review of Task Order Request. Once NCPA receives a Task Order Request from Customer, NCPA will review the Customer's request to determine if NCPA can perform the desired work. Once NCPA has completed its review of the Task Order Request, NCPA will provide a written response to Customer to confirm that NCPA is either: (i) able and willing to perform the Supplemental Services as requested, or (ii) not able or not willing to perform the Supplement Services as requested. If NCPA is able and willing to perform the Supplemental Services as requested, NCPA will provide a written proposal for NCPA's provision of the requested Supplemental Services to Customer, including a detailed project scope and estimated cost for performing the desired work ("Supplemental Services Task Order").

1.3 Task Order Confirmation. Upon receipt of the Supplemental Services Task Order, if any, Customer may agree to accept or not accept NCPA's proposal to supply Supplemental Services. If Customer agrees to accept NCPA's proposal to supply Supplemental Services, upon mutual written consent of the Designated Representatives of each Party, the Parties shall

confirm the terms and conditions of the Supplemental Services by executing the Supplemental Services Task Order. NCPA shall invoice Customer for the full estimated cost of the Supplemental Services, as set forth in the Supplemental Services Task Order, prior to NCPA's provision of the Supplemental Services to Customer. Such amounts shall be billed to Customer in accordance with Section 8 of this Agreement.

1.4 Billing Adjustments. Upon completion of the Supplemental Services, NCPA shall provide a final written accounting for all actual costs associated with NCPA's provision of the Supplemental Services to Customer, and shall either: (i) refund any positive difference between estimated costs and actual costs, or (ii) invoice Customer for the amount of actual costs that are greater than the amount of estimated costs collected from Customer ("Adjustment Amount"). Any Adjustment Amount shall be billed to Customer in accordance with Section 8 of this Agreement.

1.5 Disputes. Any disputes associated with NCPA's provision of Supplemental Services to Customer shall be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement.

# Northern California Power Agency

## Task Order Request Form

Attention: Contract Administration
651 Commerce Drive
Roseville, CA 95678
Phone: 916-781-4229
Email: tony.zimmer@ncpa.com

**Dated As:** _____
**Date of Completion:** _____

## Customer Information:

**Customer Name:** _____
**Designated Representative:** _____
**Address:** _____
**Phone:** _____
**Email:** _____

| Task Details |
| --- |
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### Additional Notes:

_____
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_____

_____
[Customer Designated Representative]

# City of San José Contract/Agreement Transmittal Form

Route order if applicable

TO: ☑ City Manager 2
☑ City Clerk 3
☑ City Attorney 1
☑ Return to Department 4

NEW CONTRACT

Type of Contract Professional Services

Existing CHAD # _____
*(Use Listing column NOT Maintenance)*

**REQUIRED INFORMATION FOR ALL CONTRACTS**

Name of Contractor: Northern California Power Agency
Address of Contractor: 651 Commerce Drive, Roseville, CA 95678
Contractor Contact Person: Tony Zimmer Contractor Phone Number: 916-781-4229
Contractor Email: Tony.Zimmer@ncpa.com
Description of Contract and Project Name: Services Agreement Between Northern California Power Agency and San Jose Clean Energy

Term Start Date: April 4, 2018 Term End Date: August 31, 2020
Agenda Date *(If applicable)*: 3/27/18 Agenda Item No.: 7.1
Resolution No.: 78540 Ordinance No.: 29987
Contract Amount: $ 1,400,000.00 Revenue? No Change Order Amount: _____
Insurance filed with Risk Management? No *(attach insurance or exemption)*
*Department is responsible for making sure insurance is on file and current.*
Is Form 700 Required? (Contract will clearly state form 700 is required) No
*If yes, attach Filer names. Contact your department contract liaison to enter required filer info into NetFile.*
Business License No: _____ Expiration Date: _____
*Department is responsible for making sure business license is current. Check here if exempt.* ☐

Department: Community Energy
Select One
Department Contact Name: Lori Mitchell
Department Phone Number: 535-4880
Department Contact Email: lori.mitchell@sanjoseca.gov

**CITY MANAGER'S OFFICE REQUIRED INFORMATION (FOR CONTRACTS SIGNED BY CITY MANAGER)**

Method of Procurement: Not Applicable Date Conducted: _____
For RFB, RFP, or RFQ provide number below.

Received
APR 30 2018
City Manager Office

For Sole Source/Unique Services, attach justification memo.
Retroactive? No If yes, attach copy of approved retroactivity memo.

Department Head Signature: _____ Date: 4/27/18

Office of the City Manager Signature: _____ Date: 5/7/18

663333 -O

2017

EXHIBIT: SJCE #11
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/7-11-18-SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 7-11-18-SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY PRODUCTS TO SJCE

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Attachments:** SJCE RFO 2019 Resource Adequacy Products - Issued 07112018.pdf; SJCE RFO 2019 Resource Adequacy Products 07112018 - Offer Form.xlsx

**Importance:** High

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

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In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

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**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

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- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

## Resource Adequacy Request for Offers: Contact Information

**Company Name:** _____
**Company Address:** _____
**City, State, Zip** _____
**Authorized Contact:** _____
**Title of Contact:** _____
**Phone Number:** _____
**Fax Number:** _____
**Email Address:** _____

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

| System Resource Adequacy | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | | | | | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

| Local Resource Adequacy - Greater Bay Area | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

| Local Resource Adequacy - Other PG&E Areas | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

EXHIBIT: SJCE #12
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/9-7-18-SJCE Request for Offers - 2019 Resource Adequacy Products
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-7-18-SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Friday, September 7, 2018 5:42 PM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Morris, Kelly
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** SJCE RFO 2019 Resource Adequacy Products - Issued 09072018.pdf; SJCE RFO 2019 Resource Adequacy Products 09072018 - Offer Form.xlsx; 8-21-preferred SJCE Resource Adequacy Transaction Confirmation 06262018.docx; 8-17-EEI Master Agreement_SJCE_Template (15 August 2018).docx

**Importance:** High

**Date Issued: September 7, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jul-19 | 537.0 | 40.0 | 148.0 | 101.0 |
| Sept-19 | 646.0 | 40.0 | 148.0 | 202.0 |
| Oct-19 | 359.0 | 40.0 | 148.0 | 164.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to September 14, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Date Issued: September 7, 2018**

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In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact

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- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

## Resource Adequacy Request for Offers: Contact Information

**Company Name:** _____
**Company Address:** _____
**City, State, Zip** _____
**Authorized Contact:** _____
**Title of Contact:** _____
**Phone Number:** _____
**Fax Number:** _____
**Email Address:** _____

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

| System Resource Adequacy | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | | | |
| Quantity Requested (MW): | 537 | 646 | 359 |
| Offer Quantity (MW): | | | |
| Offer Price ($/kW-Month): | | | |
| Flexible RA (Yes or No): | | | |
| Flexible RA Category (if applicable): | | | |
| North or South of Path 26: | | | |
| Resource Category (1, 2, 3, 4): | | | |
| Requires Import Capability Allocation (Yes or No): | | | |
| Import Branch Group (if applicable): | | | |

**Local Resource Adequacy - Greater Bay Area**

| | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | | | |
| Quantity Requested (MW): | 40 | 40 | 40 |
| Offer Quantity (MW): | | | |
| Offer Price ($/kW-Month): | | | |
| Flexible RA (Yes or No): | | | |
| Flexible RA Category (if applicable): | | | |
| Resource Category (1, 2, 3, 4): | | | |

**Local Resource Adequacy - Other PG&E Areas**

| | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | | | |
| Quantity Requested (MW): | 148 | 148 | 148 |
| Offer Quantity (MW): | | | |
| Offer Price ($/kW-Month): | | | |
| Flexible RA (Yes or No): | | | |
| Flexible RA Category (if applicable): | | | |
| Resource Category (1, 2, 3, 4): | | | |

**TRANSACTION CONFIRMATION**
**RESOURCE ADEQUACY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Party 1** ("Seller") and **the City of San José** ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the WSPP Agreement effective as of June 20, 2017, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

## ARTICLE 1. DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

**1.2** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

**1.3** "Availability Incentive Payments" is defined in the Tariff.

**1.4** "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

**1.5** "Buyer" is defined in the introductory paragraph hereof.

**1.6** "CAISO" means the California Independent System Operator Corporation or its successor.

**1.7** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

**1.8** "Confirmation" is defined in the introductory paragraph hereof.

**1.9** "Confirmation Effective Date" is defined in the introductory paragraph hereof.

**1.10** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

**1.11** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.12** "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

**1.13** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

**1.14** "Delivery Period" is defined in Section 4.1 hereof.

**1.15** "Delivery Point" is defined in Section 4.2 hereof.

**1.16** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.

**1.17** "Excusable Event" means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.

**1.18** "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

**1.19** "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.20** "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.21** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.22** "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.23** "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes.

**1.24** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.25** "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** "LRA" means Local Regulatory Authority as defined in the Tariff.

**1.27** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.28** "Monthly Delivery Period" means each calendar month during the Delivery Period and corresponds to each Showing Month.

**1.29** "Monthly RA Capacity Payment" is defined in Section 4.9 hereof.

**1.30** "Net Qualifying Capacity" is defined in the Tariff.

**1.31** "Notification Deadline" is defined in Section 4.5 hereof.

**1.32** "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

**1.33** "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.34** "Product" is defined in Article 3 hereof.

**1.35** "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

**1.36** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

**1.37** "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.38** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

**1.39** "Replacement Capacity" is defined in Section 4.7 hereof.

**1.40** "Replacement Unit" is defined in Section 4.5.

**1.41** "Resource Category" is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**1.42** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**1.43** "Scheduling Coordinator" is defined in the Tariff.

**1.44** "Seller" is defined in the introductory paragraph hereof.

**1.45** "Showing Month" is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**1.46** "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

**1.47** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

**1.48** "Transaction" for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.

**1.49** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

**1.50** "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

**1.51** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

**1.52** "WSPP Agreement" is defined in the introductory paragraph hereof.

## ARTICLE 2. UNIT INFORMATION

| | |
|---|---|
| Name: | |
| Location: | |
| CAISO Resource ID: | |
| Unit SCID: | |
| Unit NQC: | |
| Unit EFC: | |
| Resource Type: | |
| Resource Category (1, 2, 3 or 4): | |
| Flexible RAR Category (1, 2 or 3): | |
| Path 26 (North or South): | |
| Local Capacity Area (if any, as of Confirmation Effective Date): | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | |
| Run Hour Restrictions: | |

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

-
-

### 3.1 Product Attributes

☐ RA Attributes

☐ RA Attributes with Flexible RA Attributes
☐ LAR Attributes
☐ LAR Attributes with Flexible RA Attributes
☐ Flexible RA Attributes

**3.2 ☐ Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

**3.3 ☐ Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

## ARTICLE 4. DELIVERY AND PAYMENT

-

**4.1 Delivery Period**

The Delivery Period shall be: _____, 20__, through _____, 20__.

### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month | RAR Contract Quantity (MWs) |
|---|---|
| January | |
| February | |
| March | |
| April | |
| May | |
| June | |
| July | |
| August | |
| September | |
| October | |
| November | |
| December | |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

**4.5 Notification Deadline and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party in accordance with Section 4.7.

**4.6 Delivery of Product**

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be

provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

**4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.

(c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to

this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

| Contract Month | RAR Capacity Price ($/kW-month) |
|---|---|
| January | $X.XX |

| Contract Month | RAR Capacity Price ($/kW-month) |
|---|---|
| February | $X.XX |
| March | $X.XX |
| April | $X.XX |
| May | $X.XX |
| June | $X.XX |
| July | $X.XX |
| August | $X.XX |
| September | $X.XX |
| October | $X.XX |
| November | $X.XX |
| December | $X.XX |

### 4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay

such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6. [RESERVED]

## ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

-
-
-

### 7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the

Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

**7.2 Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a "Receiving Party") acknowledges that the other Party (a "Disclosing Party") may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The Parties agree not to over-designate material as

confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information"), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

## ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product ("End User") defaults (however defined) under its agreement to purchase the Product from Buyer ("End User Purchase Agreement") and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid amounts for Products

delivered prior to termination, but only to the extent that Buyer has received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User's default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

## ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law

### 12.2. Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### 12.3. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

### 12.4. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| **PARTY 1** | **CITY OF SAN JOSÉ** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

**SJCE DRAFT**
**15 AUGUST 2018**

# Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

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**SJCE DRAFT**
**15 AUGUST 2018**

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET{ TC "COVER SHEET" \f C \l "1" }**

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

| | |
|---|---|
| Name:<br>("____" or "Party A") | Name: **City of San José, a California municipality** ("SJCE" or "Party B") |
| **All Notices:**<br>Address:<br><br>Attn:_____<br>Phone:_____<br>E-mail:_____<br>Duns:_____<br>Federal Tax ID Number:_____ | **All Notices:**<br>Address: 200 E. Santa Clara Street, Tower 14<br>San José, CA 95113<br><br>Attn: Jeanne Solé<br>Phone: 408-535-4867<br>E-mail: Jeanne.sole@sanjoseca.gov<br>Duns:_____<br>Federal Tax ID Number:_____ |
| **Invoices:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Invoices:**<br>Attn: Sarah Sanchez<br>Phone: 408-535-4865<br>E-mail: sarah.sanchez@sanjoseca.gov |
| **Scheduling:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Scheduling:**<br>Attn: NCPA Pre-Scheduling Desk<br>Phone: 916-781-4227 or 916-781-4290<br>E-mail: Preschedulers@ncpa.com<br><br>**Alternative:**<br>Attn: NCPA Scheduling Coordination Desk<br>Phone: 916-781-4237 or 916-781-4280<br>E-mail: ScheduleCoordinators@ncpa.com |
| **Confirmations:**<br>Attn:_____<br>Address:_____<br>Phone:_____<br>E-Mail: _____ | **Confirmations:**<br>Attn:_____<br>Address:_____<br>Phone: _____<br>E-mail:_____ |
| **Payments:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Payments:**<br>Attn: Sarah Sanchez<br>Phone: 408-535-4865<br>E-mail: sarah.sanchez@sanjoseca.gov |


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35837999v4

**Wire Transfer:**
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn:
Phone:
E-Mail:

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

Phone:
Email:

**Wire Transfer:**
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn: Sarah Sanchez
Phone: 408-535-4865
E-mail: sarah.sanchez@sanjoseca.gov

**With additional Notices of an Event of Default or Potential Event of Default to:**
Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com


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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: _____ Effective: _____ Docket #: _____

Party B Tariff N/A

---

**Article Two**

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

---

**Article Four**

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

---

**Article Five**

Events of Default; Remedies

[ ] Cross Default for Party A:

[ ] Party A: Cross Default Amount $_____

[ ] Other Entity: Cross Default Amount $_____

[X] Cross Default for Party B:

[X] Party B: City of San José Cross Default Amount $50,000,000

[ ] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

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

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

_____

[ ] Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at http://www.sanjosecleanenergy.org/, and (2) quarterly unaudited financial statements for Party B as soon as



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practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly unaudited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

[X ] Not Applicable
[ ] Applicable

(c) Collateral Threshold:

[X] Not Applicable
[ ] Applicable

If applicable, complete the following:

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

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

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

(e) Guarantor for Party B: _____

Guarantee Amount: _____


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8.2 Party B Credit Protection:

(a) Financial Information:

[ ] Option A
[ ] Option B Specify: _____
[ ] Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at [Website]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[ ] Not Applicable
[X] Applicable

(c) Collateral Threshold:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

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

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

Party A Rounding Amount**: $**_____

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

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


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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

**Article 10**

Confidentiality

[X] Confidentiality Applicable If not checked, inapplicable.

**Schedule M**

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

[X] 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**

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

1) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

2) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two."

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

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

5) Section 1.46 is deleted in its entirety.

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

7) Section 1.52 shall be amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial


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Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc."

8) Section 1.53 is amended by:

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

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

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

9) The following defined term is added as Section 1.53A:

"1.53A "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy."

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

11) Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to"

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

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

"Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the City Counsel of Party B."

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

2.3 "No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master





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Agreement and any and all Transactions may not be orally amended or modified."

15) Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

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

"2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees."

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

18) Section 3.4 (in Schedule M) is hereby deleted in its entirety and replaced with the following:

"Section 3.4 Party B Deliveries. Upon the request of Party A, Party B shall provide Party A (i) copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance Party B of this Master Agreement and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B."

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

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


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

21) Section 5.1(h)(v) - "Events of Default"

Add "made in connection with this Agreement" after "any guaranty".

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

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

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

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

23) Section 5.2 is amended by:

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

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


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results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars ($0.00)."

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

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

26) Section 7.1 shall be amended by:

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

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

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

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

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

29) Section 8.4 is added as follows:

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

30) A new Section 8.5. "UCC Waiver," is added as follows:


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"Section 8.5: Section 8 sets 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, 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, or

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

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

31) In Section 10.2, delete the phrase "or Potential Event of Default" from Section 10.2(vii).

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

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

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

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

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

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

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

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

"it is a "forward contract merchant" within the meaning of the Title 11 of the United States Code, as amended (the "Bankruptcy Code"), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a "settlement


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payment" within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a "margin payment" within the meaning of the Bankruptcy Codes, each Party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

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

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

35) Section 10.6 shall be amended by deleting the sentence "EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT."

36) In Section 10.6 change "NEW YORK" to "CALIFORNIA"

37) Section 10.8 shall be amended by:

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

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


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38) In section 10.9 insert the words "copies of" after the word "examine" in line 2.

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

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

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

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

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

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

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

(v) the following at the end of the last sentence: "Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing


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party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

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

"10.12 Standard of Review/Modifications.

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

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or


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other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

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

"Party A's Deliveries. Upon request, Party A shall provide to Party B (i) a certificate of good standing issued by the [State] Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith."

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

"Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers."

44) The following new Section shall be added as Section 10.15:

"Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the


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Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence."

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

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

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

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

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

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

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent


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discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

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

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

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

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

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

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

"Designated Fund and Limited Obligations.


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(a) Designated Fund. Purchaser's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement (the "Designated Fund"). Purchaser agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Purchaser's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Purchaser shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund.

(b) Limited Obligations. Purchaser's payment obligations are special limited obligations of the Purchaser payable solely from the revenues of San José Clean Energy. Purchaser's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non-San José Clean Energy moneys or other property of the Community Energy Department or the City of San José."


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IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

| | **CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPALITY** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

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


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## GENERAL TERMS AND CONDITIONS{ TC "GENERAL TERMS AND CONDITIONS" \f C \l "1" }

### ARTICLE ONE: GENERAL DEFINITIONS{ TC "ARTICLE ONE: GENERAL DEFINITIONS" \f C \l "1" }

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.


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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


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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.


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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


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(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.


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## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS{ TC "ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS" \f C \l "1" }

2.1 Transactions{ TC "2.1 Transactions" \f C \l "2" }. 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{ TC "2.2 Governing Terms" \f C \l "2" }. 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{ TC "2.3 Confirmation" \f C \l "2" }. 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{ TC "2.4 Additional Confirmation Terms" \f C \l "2" }. 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{ TC "2.5 Recording" \f C \l "2" }. 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,


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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{ TC "ARTICLE THREE: OBLIGATIONS AND DELIVERIES" \f C \l "1" }

3.1 Seller's and Buyer's Obligations{ TC "3.1 Seller's and Buyer's Obligations" \f C \l "2" }. 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{ TC "3.2 Transmission and Scheduling" \f C \l "2" }. 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{ TC "3.3 Force Majeure" \f C \l "2" }. 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{ TC "ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE" \f C \l "1" }

4.1 Seller Failure{ TC "4.1 Seller Failure" \f C \l "2" }. 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.


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4.2 Buyer Failure{ TC "4.2 Buyer Failure" \f C \l "2" }. 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{ TC "ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES" \f C \l "1" }

5.1 Events of Default{ TC "5.1 Events of Default" \f C \l "2" }. 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


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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{ TC "5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts" \f C \l "2" }. 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{ TC "5.3 Net Out of Settlement Amounts" \f C \l "2" }. 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.


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5.4 Notice of Payment of Termination Payment{ TC "5.4 Notice of Payment of Termination Payment" \f C \l "2" }. 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{ TC "5.5 Disputes With Respect to Termination Payment" \f C \l "2" }. 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{ TC "5.6 Closeout Setoffs" \f C \l "2" }.

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{ TC "5.7 Suspension of Performance" \f C \l "2" }. 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.


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## ARTICLE SIX: PAYMENT AND NETTING{ TC "ARTICLE SIX: PAYMENT AND NETTING" \f C \l "1" }

6.1 Billing Period{ TC "6.1 Billing Period" \f C \l "2" }. 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{ TC "6.2 Timeliness of Payment" \f C \l "2" }. 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{ TC "6.3 Disputes and Adjustments of Invoices" \f C \l "2" }. 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{ TC "6.4 Netting of Payments" \f C \l "2" }. 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{ TC "6.5 Payment Obligation Absent Netting" \f C \l "2" }. 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


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calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security{ TC "6.6 Security" \f C \l "2" }. 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{ TC "6.7 Payment for Options" \f C \l "2" }. 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{ TC "6.8 Transaction Netting" \f C \l "2" }. 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{ TC "ARTICLE SEVEN: LIMITATIONS" \f C \l "1" }

7.1 Limitation of Remedies, Liability and Damages{ TC "7.1 Limitation of Remedies, Liability and Damages" \f C \l "2" }. 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


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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{ TC "ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS" \f C \l "1" }

8.1 Party A Credit Protection{ TC "8.1 Party A Credit Protection" \f C \l "2" }. 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.l(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.


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(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{ TC "8.2 Party B Credit Protection" \f C \l "2" }. 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


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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.


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(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{ TC "8.3 Grant of Security Interest/Remedies" \f C \l "2" }. 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{ TC "ARTICLE NINE: GOVERNMENTAL CHARGES" \f C \l "1" }

9.1 Cooperation{ TC "9.1 Cooperation" \f C \l "2" }. 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{ TC "9.2 Governmental Charges" \f C \l "2" }. 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.


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## ARTICLE TEN: MISCELLANEOUS{ TC "ARTICLE TEN: MISCELLANEOUS" \f C \l "1" }

10.1 Term of Master Agreement{ TC "10.1 Term of Master Agreement" \f C \l "2" }. 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{ TC "10.2 Representations and Warranties" \f C \l "2" }. 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);


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(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{ TC "10.3 Title and Risk of Loss" \f C \l "2" }. 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{ TC "10.4 Indemnity" \f C \l "2" }. 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{ TC "10.5 Assignment" \f C \l "2" }. 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.



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10.6 Governing Law{ TC "10.6 Governing Law" \f C \l "2" }. 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{ TC "10.7 Notices" \f C \l "2" }. 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{ TC "10.8 General" \f C \l "2" }. 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{ TC "10.9 Audit" \f C \l "2" }. 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


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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{ TC "10.10 Forward Contract" \f C \l "2" }. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality{ TC "10.11 Confidentiality" \f C \l "2" }. 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.


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## SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS{ TC "SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS" \f C \l "1" }

**(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 the San José, Cal., Muni. Code title 26 (2018).

"Designated Fund" has the meaning set forth in Section 10.18.

"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 the Designated Fund, which is set aside to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Governmental Entity'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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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


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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].


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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 CALIFORNIA SHALL APPLY.

## SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS{ TC "SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS" \f C \l "1" }

"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


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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


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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


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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.


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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:


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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


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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.


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**EXHIBIT A**{ TC "EXHIBIT A: CONFIRMATION LETTER" \f C \l "1" }

**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**

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

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

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

| | | | | | |
|---|---|---|---|---|---|
| [] | FT-Contract Path Contingency | [] | Seller | [] | Buyer |
| [] | FT-Delivery Point Contingency | [] | Seller | [] | Buyer |
| [] | Transmission Contingent | [] | Seller | [] | Buyer |
| [] | Other transmission contingency | | | | |

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____



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Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

| [Party A] | [Party B] |
|---|---|
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Phone No: _____ | Phone No: _____ |
| Fax: _____ | Fax: _____ |


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EXHIBIT: SJCE #13
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/10-11-18-SJCE Request for Offers - 2019 Resource Adequacy Products
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-11-18-SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer; Sole, Jeanne; Morris, Kelly; Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** SJCE RFO 2019 Resource Adequacy Products - Issued 10112018.pdf; SJCE RFO 2019 Resource Adequacy Products 10112018 - Offer Form.xlsx; 8-21-preferred SJCE Resource Adequacy Transaction Confirmation 06262018.....docx; 8-17-EEI Master Agreement_SJCE_Template (15 August 2018).docx

**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director

City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

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- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

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In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

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Disclaimers:

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If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

## Resource Adequacy Request for Offers: Contact Information

**Company Name:** _____
**Company Address:** _____
**City, State, Zip** _____
**Authorized Contact:** _____
**Title of Contact:** _____
**Phone Number:** _____
**Fax Number:** _____
**Email Address:** _____

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

| | Feb-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 |
|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | |
| Quantity Requested (MW): | 54 | 26.6 | 35.9 | 21.2 | 427.8 | 27.6 | 588.2 | 111.9 |
| Offer Quantity (MW): | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | |
| North or South of Path 26: | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Aug-19 | Sep-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | |
| Quantity Requested (MW): | 177 | 177 | 12 | 12 | 12 | 12 | 12 | 30 | 12 | 12 |
| Offer Quantity (MW): | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 246.9 | 246.9 | 10.1 | 10.1 | 10.1 | 10.1 | 56.2 | 10.1 | 158.2 | 148.2 | 10.1 | 10.1 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

**TRANSACTION CONFIRMATION**
**RESOURCE ADEQUACY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Party 1** ("Seller") and **the City of San José** ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the WSPP Agreement effective as of June 20, 2017, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

## ARTICLE 1. DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

**1.2** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

**1.3** "Availability Incentive Payments" is defined in the Tariff.

**1.4** "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

**1.5** "Buyer" is defined in the introductory paragraph hereof.

**1.6** "CAISO" means the California Independent System Operator Corporation or its successor.

**1.7** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

**1.8** "Confirmation" is defined in the introductory paragraph hereof.

**1.9** "Confirmation Effective Date" is defined in the introductory paragraph hereof.

**1.10** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

**1.11** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.12** "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

**1.13** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

**1.14** "Delivery Period" is defined in Section 4.1 hereof.

**1.15** "Delivery Point" is defined in Section 4.2 hereof.

**1.16** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.

**1.17** "Excusable Event" means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.

**1.18** "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

**1.19** "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.20** "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.21** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.22** "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.23** "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes.

**1.24** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.25** "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** "LRA" means Local Regulatory Authority as defined in the Tariff.

**1.27** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.28** "Monthly Delivery Period" means each calendar month during the Delivery Period and corresponds to each Showing Month.

**1.29** "Monthly RA Capacity Payment" is defined in Section 4.9 hereof.

**1.30** "Net Qualifying Capacity" is defined in the Tariff.

**1.31** "Notification Deadline" is defined in Section 4.5 hereof.

**1.32** "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

**1.33** "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.34** "Product" is defined in Article 3 hereof.

**1.35** "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

**1.36** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

**1.37** "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.38** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

**1.39** "Replacement Capacity" is defined in Section 4.7 hereof.

**1.40** "Replacement Unit" is defined in Section 4.5.

**1.41** "Resource Category" is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**1.42** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**1.43** "Scheduling Coordinator" is defined in the Tariff.

**1.44** "Seller" is defined in the introductory paragraph hereof.

**1.45** "Showing Month" is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**1.46** "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

**1.47** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

**1.48** "Transaction" for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.

**1.49** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

**1.50** "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

**1.51** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

**1.52** "WSPP Agreement" is defined in the introductory paragraph hereof.

## ARTICLE 2. UNIT INFORMATION

| | |
|---|---|
| Name: | |
| Location: | |
| CAISO Resource ID: | |
| Unit SCID: | |
| Unit NQC: | |
| Unit EFC: | |
| Resource Type: | |
| Resource Category (1, 2, 3 or 4): | |
| Flexible RAR Category (1, 2 or 3): | |
| Path 26 (North or South): | |
| Local Capacity Area (if any, as of Confirmation Effective Date): | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | |
| Run Hour Restrictions: | |

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

-
-

### 3.1 Product Attributes

☐ RA Attributes

☐ RA Attributes with Flexible RA Attributes
☐ LAR Attributes
☐ LAR Attributes with Flexible RA Attributes
☐ Flexible RA Attributes

**3.2 ☐ Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

**3.3 ☐ Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

## ARTICLE 4. DELIVERY AND PAYMENT

-

**4.1 Delivery Period**

The Delivery Period shall be: _____, 20__, through _____, 20__.

### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month | RAR Contract Quantity (MWs) |
|---|---|
| January | |
| February | |
| March | |
| April | |
| May | |
| June | |
| July | |
| August | |
| September | |
| October | |
| November | |
| December | |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

**4.5 Notification Deadline and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party in accordance with Section 4.7.

**4.6 Delivery of Product**

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be

provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

**4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.

(c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to

this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

| Contract Month | RAR Capacity Price ($/kW-month) |
|---|---|
| January | $X.XX |

| Contract Month | RAR Capacity Price ($/kW-month) |
|---|---|
| February | $X.XX |
| March | $X.XX |
| April | $X.XX |
| May | $X.XX |
| June | $X.XX |
| July | $X.XX |
| August | $X.XX |
| September | $X.XX |
| October | $X.XX |
| November | $X.XX |
| December | $X.XX |

### 4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay

such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6. [RESERVED]

## ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

-
-
-

### 7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the

Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

**7.2 Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a "Receiving Party") acknowledges that the other Party (a "Disclosing Party") may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The Parties agree not to over-designate material as

confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information"), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

## ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product ("End User") defaults (however defined) under its agreement to purchase the Product from Buyer ("End User Purchase Agreement") and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid amounts for Products

delivered prior to termination, but only to the extent that Buyer has received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User's default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

## ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law

### 12.2. Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of

the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### 12.3. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

### 12.4. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| **PARTY 1** | **CITY OF SAN JOSÉ** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

**SJCE DRAFT**
**15 AUGUST 2018**

# Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

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**SJCE DRAFT**
**15 AUGUST 2018**

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET{ TC "COVER SHEET" \f C \l "1" }**

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

| | |
|---|---|
| Name:<br>("____" or "Party A") | Name: **City of San José, a California municipality** ("SJCE" or "Party B") |
| **All Notices:**<br>Address:<br><br>Attn:_____<br>Phone:_____<br>E-mail:_____<br>Duns:_____<br>Federal Tax ID Number:_____ | **All Notices:**<br>Address: 200 E. Santa Clara Street, Tower 14<br>San José, CA 95113<br><br>Attn: Jeanne Solé<br>Phone: 408-535-4867<br>E-mail: Jeanne.sole@sanjoseca.gov<br>Duns:_____<br>Federal Tax ID Number:_____ |
| **Invoices:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Invoices:**<br>Attn: Sarah Sanchez<br>Phone: 408-535-4865<br>E-mail: sarah.sanchez@sanjoseca.gov |
| **Scheduling:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Scheduling:**<br>Attn: NCPA Pre-Scheduling Desk<br>Phone: 916-781-4227 or 916-781-4290<br>E-mail: Preschedulers@ncpa.com<br><br>**Alternative:**<br>Attn: NCPA Scheduling Coordination Desk<br>Phone: 916-781-4237 or 916-781-4280<br>E-mail: ScheduleCoordinators@ncpa.com |
| **Confirmations:**<br>Attn:_____<br>Address:_____<br>Phone:_____<br>E-Mail: _____ | **Confirmations:**<br>Attn:_____<br>Address:_____<br>Phone: _____<br>E-mail:_____ |
| **Payments:**<br>Attn:_____<br>Phone:_____<br>E-Mail: _____ | **Payments:**<br>Attn: Sarah Sanchez<br>Phone: 408-535-4865<br>E-mail: sarah.sanchez@sanjoseca.gov |


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35837999v4

**Wire Transfer:**
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn:
Phone:
E-Mail:

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

Phone:
Email:

**Wire Transfer:**
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn: Sarah Sanchez
Phone: 408-535-4865
E-mail: sarah.sanchez@sanjoseca.gov

**With additional Notices of an Event of Default or Potential Event of Default to:**
Attn: Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, OR 97204
Attn: Stephen Hall
Phone: 503-290-2336
Email: Steve.Hall@troutmansanders.com


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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: _____ Effective: _____ Docket #: _____

Party B Tariff N/A

---

**Article Two**

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

---

**Article Four**

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

---

**Article Five**

Events of Default; Remedies

[ ] Cross Default for Party A:

[ ] Party A: Cross Default Amount $_____

[ ] Other Entity: Cross Default Amount $_____

[X] Cross Default for Party B:

[X] Party B: City of San José Cross Default Amount $50,000,000

[ ] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

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

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

_____

[ ] Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at http://www.sanjosecleanenergy.org/, and (2) quarterly unaudited financial statements for Party B as soon as



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practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly unaudited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

[X ] Not Applicable
[ ] Applicable

(c) Collateral Threshold:

[X] Not Applicable
[ ] Applicable

If applicable, complete the following:

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

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

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

(e) Guarantor for Party B: _____

Guarantee Amount: _____


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8.2 Party B Credit Protection:

(a) Financial Information:

[ ] Option A
[ ] Option B Specify: _____
[ ] Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at [Website]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[ ] Not Applicable
[X] Applicable

(c) Collateral Threshold:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

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

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

Party A Rounding Amount**: $**_____

(d) Downgrade Event:

[ ] Not Applicable
[X] Applicable

If applicable, complete the following:

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


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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

**Article 10**

Confidentiality

[X] Confidentiality Applicable If not checked, inapplicable.

**Schedule M**

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

[X] 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**

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

1) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

2) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two."

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

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

5) Section 1.46 is deleted in its entirety.

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

7) Section 1.52 shall be amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial


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Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc."

8) Section 1.53 is amended by:

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

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

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

9) The following defined term is added as Section 1.53A:

"1.53A "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy."

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

11) Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to"

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

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

"Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the City Counsel of Party B."

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

2.3 "No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master





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Agreement and any and all Transactions may not be orally amended or modified."

15) Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

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

"2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees."

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

18) Section 3.4 (in Schedule M) is hereby deleted in its entirety and replaced with the following:

"Section 3.4 Party B Deliveries. Upon the request of Party A, Party B shall provide Party A (i) copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance Party B of this Master Agreement and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B."

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

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


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

21) Section 5.1(h)(v) - "Events of Default"

Add "made in connection with this Agreement" after "any guaranty".

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

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

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

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

23) Section 5.2 is amended by:

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

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


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results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars ($0.00)."

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

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

26) Section 7.1 shall be amended by:

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

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

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

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

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

29) Section 8.4 is added as follows:

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

30) A new Section 8.5. "UCC Waiver," is added as follows:


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"Section 8.5: Section 8 sets 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, 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, or

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

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

31) In Section 10.2, delete the phrase "or Potential Event of Default" from Section 10.2(vii).

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

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

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

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

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

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

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

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

"it is a "forward contract merchant" within the meaning of the Title 11 of the United States Code, as amended (the "Bankruptcy Code"), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a "settlement


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payment" within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a "margin payment" within the meaning of the Bankruptcy Codes, each Party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

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

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

35) Section 10.6 shall be amended by deleting the sentence "EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT."

36) In Section 10.6 change "NEW YORK" to "CALIFORNIA"

37) Section 10.8 shall be amended by:

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

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


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38) In section 10.9 insert the words "copies of" after the word "examine" in line 2.

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

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

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

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

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

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

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

(v) the following at the end of the last sentence: "Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing


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party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

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

"10.12 Standard of Review/Modifications.

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

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or


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other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

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

"Party A's Deliveries. Upon request, Party A shall provide to Party B (i) a certificate of good standing issued by the [State] Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith."

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

"Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers."

44) The following new Section shall be added as Section 10.15:

"Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the


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Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence."

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

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

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

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

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

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

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent


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discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

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

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

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

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

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

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

"Designated Fund and Limited Obligations.


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(a) Designated Fund. Purchaser's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement (the "Designated Fund"). Purchaser agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Purchaser's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Purchaser shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund.

(b) Limited Obligations. Purchaser's payment obligations are special limited obligations of the Purchaser payable solely from the revenues of San José Clean Energy. Purchaser's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non-San José Clean Energy moneys or other property of the Community Energy Department or the City of San José."


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IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

| | **CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPALITY** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

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


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## GENERAL TERMS AND CONDITIONS{ TC "GENERAL TERMS AND CONDITIONS" \f C \l "1" }

### ARTICLE ONE: GENERAL DEFINITIONS{ TC "ARTICLE ONE: GENERAL DEFINITIONS" \f C \l "1" }

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.


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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


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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.


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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


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(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.


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## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS{ TC "ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS" \f C \l "1" }

2.1 Transactions{ TC "2.1 Transactions" \f C \l "2" }. 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{ TC "2.2 Governing Terms" \f C \l "2" }. 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{ TC "2.3 Confirmation" \f C \l "2" }. 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{ TC "2.4 Additional Confirmation Terms" \f C \l "2" }. 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{ TC "2.5 Recording" \f C \l "2" }. 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,


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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{ TC "ARTICLE THREE: OBLIGATIONS AND DELIVERIES" \f C \l "1" }

3.1 Seller's and Buyer's Obligations{ TC "3.1 Seller's and Buyer's Obligations" \f C \l "2" }. 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{ TC "3.2 Transmission and Scheduling" \f C \l "2" }. 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{ TC "3.3 Force Majeure" \f C \l "2" }. 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{ TC "ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE" \f C \l "1" }

4.1 Seller Failure{ TC "4.1 Seller Failure" \f C \l "2" }. 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.


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4.2 Buyer Failure{ TC "4.2 Buyer Failure" \f C \l "2" }. 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{ TC "ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES" \f C \l "1" }

5.1 Events of Default{ TC "5.1 Events of Default" \f C \l "2" }. 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


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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{ TC "5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts" \f C \l "2" }. 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{ TC "5.3 Net Out of Settlement Amounts" \f C \l "2" }. 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.


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5.4 Notice of Payment of Termination Payment{ TC "5.4 Notice of Payment of Termination Payment" \f C \l "2" }. 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{ TC "5.5 Disputes With Respect to Termination Payment" \f C \l "2" }. 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{ TC "5.6 Closeout Setoffs" \f C \l "2" }.

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{ TC "5.7 Suspension of Performance" \f C \l "2" }. 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.


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## ARTICLE SIX: PAYMENT AND NETTING{ TC "ARTICLE SIX: PAYMENT AND NETTING" \f C \l "1" }

6.1 Billing Period{ TC "6.1 Billing Period" \f C \l "2" }. 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{ TC "6.2 Timeliness of Payment" \f C \l "2" }. 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{ TC "6.3 Disputes and Adjustments of Invoices" \f C \l "2" }. 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{ TC "6.4 Netting of Payments" \f C \l "2" }. 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{ TC "6.5 Payment Obligation Absent Netting" \f C \l "2" }. 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


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calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security{ TC "6.6 Security" \f C \l "2" }. 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{ TC "6.7 Payment for Options" \f C \l "2" }. 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{ TC "6.8 Transaction Netting" \f C \l "2" }. 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{ TC "ARTICLE SEVEN: LIMITATIONS" \f C \l "1" }

7.1 Limitation of Remedies, Liability and Damages{ TC "7.1 Limitation of Remedies, Liability and Damages" \f C \l "2" }. 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


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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{ TC "ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS" \f C \l "1" }

8.1 Party A Credit Protection{ TC "8.1 Party A Credit Protection" \f C \l "2" }. 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.l(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.


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(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{ TC "8.2 Party B Credit Protection" \f C \l "2" }. 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


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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.


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(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{ TC "8.3 Grant of Security Interest/Remedies" \f C \l "2" }. 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{ TC "ARTICLE NINE: GOVERNMENTAL CHARGES" \f C \l "1" }

9.1 Cooperation{ TC "9.1 Cooperation" \f C \l "2" }. 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{ TC "9.2 Governmental Charges" \f C \l "2" }. 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.


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## ARTICLE TEN: MISCELLANEOUS{ TC "ARTICLE TEN: MISCELLANEOUS" \f C \l "1" }

10.1 Term of Master Agreement{ TC "10.1 Term of Master Agreement" \f C \l "2" }. 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{ TC "10.2 Representations and Warranties" \f C \l "2" }. 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);


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(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{ TC "10.3 Title and Risk of Loss" \f C \l "2" }. 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{ TC "10.4 Indemnity" \f C \l "2" }. 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{ TC "10.5 Assignment" \f C \l "2" }. 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.



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10.6 Governing Law{ TC "10.6 Governing Law" \f C \l "2" }. 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{ TC "10.7 Notices" \f C \l "2" }. 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{ TC "10.8 General" \f C \l "2" }. 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{ TC "10.9 Audit" \f C \l "2" }. 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


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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{ TC "10.10 Forward Contract" \f C \l "2" }. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality{ TC "10.11 Confidentiality" \f C \l "2" }. 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.


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## SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS{ TC "SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS" \f C \l "1" }

**(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 the San José, Cal., Muni. Code title 26 (2018).

"Designated Fund" has the meaning set forth in Section 10.18.

"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 the Designated Fund, which is set aside to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Governmental Entity'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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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


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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].


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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 CALIFORNIA SHALL APPLY.

## SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS{ TC "SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS" \f C \l "1" }

"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


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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


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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


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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.


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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:


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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


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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.


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**EXHIBIT A**{ TC "EXHIBIT A: CONFIRMATION LETTER" \f C \l "1" }

**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**

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

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

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

| | | | | | |
|---|---|---|---|---|---|
| [] | FT-Contract Path Contingency | [] | Seller | [] | Buyer |
| [] | FT-Delivery Point Contingency | [] | Seller | [] | Buyer |
| [] | Transmission Contingent | [] | Seller | [] | Buyer |
| [] | Other transmission contingency | | | | |

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____



Version 2.1 (modified 4/25/00)
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Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

| [Party A] | [Party B] |
|---|---|
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Phone No: _____ | Phone No: _____ |
| Fax: _____ | Fax: _____ |


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EXHIBIT: SJCE #14
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/10-23-18-SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-23-18-SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY PRODUCTS

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Tuesday, October 23, 2018 9:30 PM
**To:** Tony Zimmer; Sole, Jeanne; Morris, Kelly
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products
**Attachments:** SJCE RFO 2019 Resource Adequacy Products - Issued 10232018.pdf; SJCE RFO 2019 Resource Adequacy Products 10232018 - Offer Form.xlsx

**Importance:** High

**Date Issued: October 23, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 0.0 | 4.4 | 7.2 |
| Feb-19 | 0.0 | 177.0 | 162.0 | 7.2 |
| Mar-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Apr-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| May-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Jun-19 | 0.0 | 6.0 | 0.0 | 0.0 |
| Jul-19 | 412.0 | 4.7 | 55.1 | 34.3 |
| Aug-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Sep-19 | 678.8 | 30.0 | 158.1 | 120.8 |
| Oct-19 | 0.0 | 0.0 | 143.9 | 77.5 |
| Nov-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 5.3 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 25, 2018 at 5:00 PM Pacific:**

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Date Issued: October 23, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
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| Feb-19 | 0.0 | 177.0 | 162.0 | 7.2 |
| Mar-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Apr-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| May-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Jun-19 | 0.0 | 6.0 | 0.0 | 0.0 |
| Jul-19 | 412.0 | 4.7 | 55.1 | 34.3 |
| Aug-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Sep-19 | 678.8 | 30.0 | 158.1 | 120.8 |
| Oct-19 | 0.0 | 0.0 | 143.9 | 77.5 |
| Nov-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 5.3 | 0.0 |

**Submission of Offers**

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- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

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If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

## Resource Adequacy Request for Offers: Contact Information

**Company Name:** _____
**Company Address:** _____
**City, State, Zip** _____
**Authorized Contact:** _____
**Title of Contact:** _____
**Phone Number:** _____
**Fax Number:** _____
**Email Address:** _____

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

| System Resource Adequacy | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 0 | 0 | 0 | 0 | 0 | 0 | 412 | 0 | 678.8 | 0 | 0 | 0 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | | | | | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 0 | 177 | 0 | 0 | 12 | 6 | 4.7 | 0 | 30 | 0 | 0 | 12 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 4.4 | 162 | 0 | 0 | 10.1 | 0 | 55.1 | 0 | 158.1 | 143.9 | 0 | 5.3 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

EXHIBIT: SJCE #15
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/11-10.11.18 Screenshot of Web Solicit
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 11-10.11.18 SCREENSHOT OF WEB SOLICIT

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

https://www.sanjosecleanenergy.org/node/79

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# CS_RFO TO SELL CY 2019 RAPS TO SJCE_10.11.18

VIEW EDIT

Submitted by rayb on Thu, 11/29/2018 - 23:08
Closed

**Solicitation Title:**
Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Solicitation Description:**
Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE.

**Solicitation read more:**

READ THE FULL RFP

**Solicitation Documents:**
Transaction Confirmation Resource Adequacy
Confirmation - Master Power Purchase & Sale Agreement

EXHIBIT: SJCE #16
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/11-10.11.18-2 Screenshot of Web Solicit
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 11-10.11.18-2 SCREENSHOT OF WEB SOLICIT

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

corresponding Renewable Energy Credits (RECs) generated during 2018 pursuant to a confirmation.

READ THE FULL RFP

Transaction Confirmation Resource Adequacy

## Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE.

READ THE FULL RFP

**Attachments**

Transaction Confirmation Resource Adequacy

Confirmation - Master Power Purchase & Sale Agreement

Offers to Sell Resource Adequacy Products to SJCE

EXHIBIT: SJCE #17
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/11-10.23.18 Screenshot of Web Solicit
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 11-10.23.18 SCREENSHOT OF WEB SOLICIT

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

Resource Adequacy Transaction Confirmation

## Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE.

READ THE FULL RFP

**Attachments**

Resource Adequacy Products - Offer Form

EXHIBIT: SJCE #18
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/11-Unknown Date Screenshot of Web Solicit
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 11-UNKNOWN DATE SCREENSHOT OF WEB SOLICIT

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

https://www.sanjosecleanenergy.org/node/77

Apps Outlook OneDrive CED SharePoint Intranet eWay Xfinity Smaller OTAs SJCE GILES ConfRooms City SJCE Site Platts VPN

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A Program of the City of San José

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# RFP TO SELL CY2019 RAP

VIEW EDIT

Submitted by rayb on Thu, 11/29/2018 - 22:45
Closed

**Solicitation Title:**
Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Solicitation Description:**
Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE.

**Solicitation read more:**

READ THE FULL RFP

**Solicitation Documents:**
Resource Adequacy Products - Offer Form

EXHIBIT: SJCE #19
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ CONFIDENTIAL - OK 7-23-2018-RE SJCE Request for Offers to Sell CY 2019 Resource Adequacy
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# CONFIDENTIAL - OK 7-23-2018-RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Monday, July 23, 2018 5:51 PM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** RA_Solicitations; Arjo, Avery; Chang, Kimberly; Loh, Vincent; Kowalewski, Michael; Desai, Gaurang; Wojda, Stephanie; Gong, Alice; Perry, Michael; Gomez, Robert
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Attachments:** SJCE RFO 2019 Resource Adequacy Products - PGE Offer Form.xlsx

**Confidential Protected Material**
**Not for Public Disclosure**
**** Do Not Forward ****

Dear Tony and Jeanne,

PG&E is pleased to submit offers for consideration in SJCE's RFO for 2019 through 2021 RA Products issued on July 11, 2018. Offers are indicative and subject to PG&E management approval, credit, and contracting.

If you have any questions or feedback concerning this transaction, please do not hesitate to contact me.

Kind regards,

Avery Arjo
Portfolio Management
Pacific Gas & Electric Company
Avery.Arjo@pge.com | 415-973-0117

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

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- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
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- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

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If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Resource Adequacy Request for Offers: Contact Information**

| | |
|---|---|
| **Company Name:** | Pacific Gas and Electric |
| **Company Address:** | 77 Beale Street |
| **City, State, Zip** | San Francisco, CA, 94105 |
| **Authorized Contact:** | Kimberly Chang and Avery Arjo |
| **Title of Contact:** | Portfolio Management |
| **Phone Number:** | (415) 972-5472 |
| **Fax Number:** | |
| **Email Address:** | kwcc@pge.com; a4aq@pge.com; RASolicitations@pge.com |

CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval and the prior execution of definitive documents.

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

**Offer 1**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | | | | | | | | | | | |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | 12 | | | | | | | | | | | |
| Offer Price ($/kW-Month): | $ 2.18 | | | | | | | | | | | |
| Flexible RA (Yes or No): | To Be Discussed | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | North | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | | | | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | No | | | | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

**System Resource Adequacy**

**Offer 2**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | PG&E | | | | | | | | | | |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | | 12 | | | | | | | | | | |
| Offer Price ($/kW-Month): | | $ 2.18 | | | | | | | | | | |
| Flexible RA (Yes or No): | | To Be Discussed | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | North | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | 4 | | | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | | No | | | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

**System Resource Adequacy**

**Offer 3**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | | | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 |
| Offer Price ($/kW-Month): | | | $ 2.18 | $ 1.68 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.38 | $ 1.68 | $ 1.68 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | | North | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | | | No | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**System Resource Adequacy**

**Offer 4 - Contingent on Accepting Offer 3 in full.**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | | | | 52 | 105 | 125 | 157 | 159 | 167 | 57 | 25 | 74 |
| Offer Price ($/kW-Month): | | | | $ 1.93 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 2.63 | $ 1.93 | $ 1.93 |
| Flexible RA (Yes or No): | | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | | | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | | | | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

Contingent on full acceptance of Offer 3. Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**System Resource Adequacy**

**Offer 5 - Contingent on Accepting Offer 3 in full.**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | | | | 52 | 105 | 125 | 157 | 159 | 167 | 57 | 25 | 74 |
| Offer Price ($/kW-Month): | | | | $ 2.18 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 2.88 | $ 2.18 | $ 2.18 |
| Flexible RA (Yes or No): | | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |

Contingent on full acceptance of Offer 3. Offer submitted as strip. Buyer must take all months of

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | | | | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | | | | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

the product and may not select monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

**Offer 6**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | | | | | | | | | | | |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | 5 | | | | | | | | | | | |
| Offer Price ($/kW-Month): | $3.00 | | | | | | | | | | | |
| Flexible RA (Yes or No): | To Be Discussed | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

**Offer 7**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | PG&E | | | | | | | | | | |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | 5 | | | | | | | | | | |
| Offer Price ($/kW-Month): | | $3.00 | | | | | | | | | | |
| Flexible RA (Yes or No): | | To Be Discussed | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | 4 | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

**Offer 8**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 |
| Offer Price ($/kW-Month): | | | $ 2.50 | $ 2.50 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.80 | $ 2.80 | $ 2.80 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

**Offer 9**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 |
| Offer Price ($/kW-Month): | | | $ 2.75 | $ 2.75 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 3.05 | $ 3.05 | $ 3.05 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

**Offer 10**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 |
| Offer Price ($/kW-Month): | | | $ 3.00 | $ 3.00 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 3.30 | $ 3.30 | $ 3.30 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 11**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | | | | | | | | | | | |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 7 | | | | | | | | | | | |
| Offer Price ($/kW-Month): | $3.00 | | | | | | | | | | | |
| Flexible RA (Yes or No): | To Be Discussed | | | | | | | | | | | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

**Offer 12**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | PG&E | | | | | | | | | | |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | 7 | | | | | | | | | | |
| Offer Price ($/kW-Month): | | $3.00 | | | | | | | | | | |
| Flexible RA (Yes or No): | | To Be Discussed | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | 4 | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

**Offer 13**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | | | $ 2.50 | $ 2.50 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.80 | $ 2.80 | $ 2.80 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 14**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | | | $ 2.75 | $ 2.75 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 3.05 | $ 3.05 | $ 3.05 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 15**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 |
| Offer Price ($/kW-Month): | | | $ 3.00 | $ 3.00 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 3.30 | $ 3.30 | $ 3.30 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval and the prior execution of definitive documents.

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

| System Resource Adequacy | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 16 — Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| Offer Quantity (MW): | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | |
| Offer Price ($/kW-Month): | $1.20 | $1.20 | $1.20 | $1.20 | $1.25 | $4.75 | $6.00 | $6.00 | $6.00 | $1.90 | $1.90 | $1.90 | Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| Import Branch Group (if applicable): | | | | | | | | | | | | | |

| System Resource Adequacy | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 17 — Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| Offer Quantity (MW): | 105 | 105 | 105 | 51.5 | 105 | 125 | 157 | 158.5 | 167 | 57 | 25 | 74 | |
| Offer Price ($/kW-Month): | $1.45 | $1.45 | $1.45 | $1.45 | $1.50 | $5.00 | $6.25 | $6.25 | $6.25 | $2.15 | $2.15 | $2.15 | Contingent on full acceptance of Offer 16. Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| Import Branch Group (if applicable): | | | | | | | | | | | | | |

| System Resource Adequacy | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 18 — Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| Offer Quantity (MW): | 105 | 105 | 105 | 51.5 | 105 | 125 | 157 | 158.5 | 167 | 57 | 25 | 74 | |
| Offer Price ($/kW-Month): | $1.70 | $1.70 | $1.70 | $1.70 | $1.75 | $5.25 | $6.50 | $6.50 | $6.50 | $2.40 | $2.40 | $2.40 | Contingent on full acceptance of Offer 16. Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| Import Branch Group (if applicable): | | | | | | | | | | | | | |

| Local Resource Adequacy - Greater Bay Area | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 19 — Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | |
| Offer Quantity (MW): | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | |
| Offer Price ($/kW-Month): | $2.75 | $2.75 | $2.75 | $2.75 | $2.75 | $4.75 | $6.00 | $6.00 | $6.00 | $2.75 | $2.75 | $2.75 | Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| Import Branch Group (if applicable): | | | | | | | | | | | | | |

| Local Resource Adequacy - Greater Bay Area | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 20 — Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | |
| Offer Quantity (MW): | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | |
| Offer Price ($/kW-Month): | $3.00 | $3.00 | $3.00 | $3.00 | $3.00 | $5.00 | $6.25 | $6.25 | $6.25 | $3.00 | $3.00 | $3.00 | Offer submitted as strip. Buyer must take all months of the product and may not select |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

**Offer 21**

| | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 |
| Offer Price ($/kW-Month): | $3.25 | $3.25 | $3.25 | $3.25 | $3.25 | $5.25 | $6.50 | $6.50 | $6.50 | $3.25 | $3.25 | $3.25 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 22**

| | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | $ 2.75 | $ 2.75 | $ 2.75 | $ 2.75 | $ 2.75 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.75 | $ 2.75 | $ 2.75 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 23**

| | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | $ 3.00 | $ 3.00 | $ 3.00 | $ 3.00 | $ 3.00 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 3.00 | $ 3.00 | $ 3.00 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 24**

| | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 |
| Offer Price ($/kW-Month): | $ 3.25 | $ 3.25 | $ 3.25 | $ 3.25 | $ 3.25 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 3.25 | $ 3.25 | $ 3.25 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval and the prior execution of definitive documents.

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

| System Resource Adequacy | | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 25 | Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| | Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| | Offer Quantity (MW): | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | |
| | Offer Price ($/kW-Month): | $1.35 | $1.35 | $1.35 | $1.35 | $1.35 | $4.75 | $6.00 | $6.00 | $6.00 | $1.35 | $1.35 | $1.35 | Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| | Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| | Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| | North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| | Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| | Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| | Import Branch Group (if applicable): | | | | | | | | | | | | | |

| System Resource Adequacy | | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 26 | Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| | Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| | Offer Quantity (MW): | 105 | 105 | 105 | 51.5 | 105 | 125 | 157 | 158.5 | 167 | 57 | 25 | 74 | |
| | Offer Price ($/kW-Month): | $1.60 | $1.60 | $1.60 | $1.60 | $1.60 | $5.00 | $6.25 | $6.25 | $6.25 | $1.60 | $1.60 | $1.60 | Contingent on full acceptance of Offer 25. Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| | Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| | Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| | North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| | Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| | Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| | Import Branch Group (if applicable): | | | | | | | | | | | | | |

| System Resource Adequacy | | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 27 | Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| | Quantity Requested (MW): | 360 | 360 | 360 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 | |
| | Offer Quantity (MW): | 105 | 105 | 105 | 51.5 | 105 | 125 | 157 | 158.5 | 167 | 57 | 25 | 74 | |
| | Offer Price ($/kW-Month): | $1.85 | $1.85 | $1.85 | $1.85 | $1.85 | $5.25 | $6.50 | $6.50 | $6.50 | $1.85 | $1.85 | $1.85 | Contingent on full acceptance of Offer 25. Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| | Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| | Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| | North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| | Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| | Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| | Import Branch Group (if applicable): | | | | | | | | | | | | | |

| Local Resource Adequacy - Greater Bay Area | | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 28 | Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| | Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | |
| | Offer Quantity (MW): | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | |
| | Offer Price ($/kW-Month): | $1.75 | $1.75 | $1.75 | $1.75 | $1.75 | $4.75 | $6.00 | $6.00 | $6.00 | $1.75 | $1.75 | $1.75 | Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only. |
| | Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| | Flexible RA Category (if applicable): | | | | | | | | | | | | | |
| | North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North | |
| | Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| | Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No | |
| | Import Branch Group (if applicable): | | | | | | | | | | | | | |

| Local Resource Adequacy - Greater Bay Area | | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer 29 | Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | |
| | Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | |
| | Offer Quantity (MW): | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | |
| | Offer Price ($/kW-Month): | $2.00 | $2.00 | $2.00 | $2.00 | $2.00 | $5.00 | $6.25 | $6.25 | $6.25 | $2.00 | $2.00 | $2.00 | Offer submitted as strip. Buyer must take all months of the product and may not select |
| | Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed | |
| | Flexible RA Category (if applicable): | | | | | | | | | | | | | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

**Offer 30**

| | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 |
| Offer Price ($/kW-Month): | $2.25 | $2.25 | $2.25 | $2.25 | $2.25 | $5.25 | $6.50 | $6.50 | $6.50 | $2.25 | $2.25 | $2.25 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | North | North | North | North | North | North | North | North | North | North | North | North |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Requires Import Capability Allocation (Yes or No): | No | No | No | No | No | No | No | No | No | No | No | No |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 31**

| | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | $ 1.75 | $ 1.75 | $ 1.75 | $ 1.75 | $ 1.75 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 1.75 | $ 1.75 | $ 1.75 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 32**

| | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | $ 2.00 | $ 2.00 | $ 2.00 | $ 2.00 | $ 2.00 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 2.00 | $ 2.00 | $ 2.00 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

**Offer 33**

| | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | Jul-21 | Aug-21 | Sep-21 | Oct-21 | Nov-21 | Dec-21 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 |
| Offer Price ($/kW-Month): | $ 2.25 | $ 2.25 | $ 2.25 | $ 2.25 | $ 2.25 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 2.25 | $ 2.25 | $ 2.25 |
| Flexible RA (Yes or No): | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

EXHIBIT: SJCE #20
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 7-19-2018-RE SJCE Request for Offers to Sell CY - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 7-19-2018-RE SJCE REQUEST FOR OFFERS TO SELL CY - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Andrew Crawford <acrawford@mercedid.org>
**Sent:** Thursday, July 19, 2018 4:13 PM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** Richard Dragonajtys
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Attachments:** Merced Irrigation District - SJCE RFO 2019 Resource Adequacy Products 07....xlsx; IFB-2018-07 Merced Irrigation District Hydro RA Sale.pdf

Hello,

Thank you for the opportunity to bid. Our offer is attached. I added a second Local PG&E Other section to account for our separate flex and non flex amounts we have in the same months.

We too have a current solicitation for bids to purchase our RA. The deadline for our solicitation is July 23rd at 5:00pm. If interested, can I please have a response to this offer or a bid to our IFB (also attached), by then?

Much appreciated,

**Andrew Crawford**
*Associate Engineer – Energy Resources*
Merced Irrigation District
Office: 209-354-2866
Cell: 209-626-9682

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Cc:** Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>; Mitchell, Lori <Lori.Mitchell@sanjoseca.gov>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Resource Adequacy Request for Offers: Contact Information**

| | |
|---|---|
| **Company Name:** | Merced Irrigation District |
| **Company Address:** | 744 W. 20th Street |
| **City, State, Zip** | Merced, CA, 95340 |
| **Authorized Contact:** | Andrew Crawford |
| **Title of Contact:** | Associate Engineer |
| **Phone Number:** | 209-354-2866 |
| **Fax Number:** | |
| **Email Address:** | acrawford@mercedid.org |

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| Offer Quantity (MW): | 12 | 12 | | | | | | | | | | |
| Offer Price ($/kW-Month): | $ 2.00 | $ 2.00 | | | | | | | | | | |
| Flexible RA (Yes or No): | No | No | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| North or South of Path 26: | North | North | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | | | | | | | | | | |
| Requires Import Capability Allocation (Yes or No): | No | No | | | | | | | | | | |
| Import Branch Group (if applicable): | | | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | | | | | | | | | | |
| Quantity Requested (MW): | 5 | 5 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 | 185 |
| Offer Quantity (MW): | | | | | | | | | | | | |
| Offer Price ($/kW-Month): | | | | | | | | | | | | |
| Flexible RA (Yes or No): | | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigation Distirct |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 7 | 7 | 90.72 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 90.72 | 90.72 |
| Offer Price ($/kW-Month): | $ 2.20 | $ 2.20 | $ 2.20 | $ 3.60 | $ 3.60 | $ 5.95 | $ 5.95 | $ 5.95 | $ 5.95 | $ 3.60 | $ 2.20 | $ 2.20 |
| Flexible RA (Yes or No): | No | No | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | No |
| Flexible RA Category (if applicable): | | | | Base | Base | Base | Base | Base | Base | Base | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

| | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 |
|---|---|---|---|---|---|---|---|
| Seller: | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigatio | Merced Irrigation Distirct |
| Quantity Requested (MW): | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 32.72 | 32.72 | 32.72 | 32.72 | 32.72 | 32.72 | 32.72 |
| Offer Price ($/kW-Month): | $ 3.50 | $ 3.50 | $ 5.85 | $ 5.85 | $ 5.85 | $ 5.85 | $ 3.50 |
| Flexible RA (Yes or No): | No | No | No | No | No | No | No |
| Flexible RA Category (if applicable): | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

MERCED IRRIGATION DISTRICT
**MID-IFB-2018-07**

Notice is hereby given that the Merced Irrigation District (MID) calls for bids to purchase Contingent-Firm Flexible and Generic RA capacity from the Exchequer, McSwain, and Merced Falls powerhouses for calendar year 2019. Unit characteristics and available capacity are below:

| | Exchequer | McSwain | Merced Falls |
|---|---|---|---|
| Unit Type | Hydro | Hydro | Hydro |
| CAISO ID | EXCHEC_7_UNIT 1 | MCSWAN_6_UNITS | MERCFL_6_UNIT |
| NQC | 90.72 | 9.60 | 3.36 |
| EFC | 90.72 | | |
| Local Area | Fresno | Fresno | Fresno |
| Path 26 | North | North | North |
| Min. Qualified Category | 1 | 2 | 1 |
| Dispatchable | Yes | Yes | Yes |

| | | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Flex | Exchequer | | | | 70.00 | 70.00 | 70.00 | 70.00 | 70.00 | 70.00 | 70.00 | | |
| Generic | Exchequer | 90.72 | 90.72 | 90.72 | 20.72 | 20.72 | 20.72 | 20.72 | 20.72 | 20.72 | 20.72 | 90.72 | 90.72 |
| Generic | McSwain | | | | 9.60 | 9.60 | 9.60 | 9.60 | 9.60 | 9.60 | 9.60 | | |
| Generic | Merced Falls | | | | 3.36 | 3.36 | 3.36 | 3.36 | 3.36 | 3.36 | 3.36 | | |

1. Bids for McSwain and Merced Falls must be a minimum of 9 and 3 MW. Bids for Exchequer generic must be a minimum of 20 MW for April through October. All other bids can be for any specific amount below the amount available for the month. Bidders may also bid on Exchequer Flex as Generic. Award will be based on a combination of most sold RA and greatest revenue for MID, based on what bids come in.

2. MID expects the 2019 maintenance outage for Exchequer to be November, 2019. However, MID reserves the right to reschedule the Exchequer outage at any time to any month or months as necessitated by maintenance and operational needs. MID will make every effort to give the buyer as much advanced notice as possible for any planned outages.

3. The bid amount shall include separate pricing for all the flexible attributes based on EFC and category listed for Exchequer.

   Bid documents must be received via e-mail to Andrew Crawford at acrawford@mercedid.org. Bids can be attached to the e-mail or in the body of the e-mail. Bids should be date stamped no later than July 23, 2018.

4. Contingent awards will be communicated on July 27, 2018. Official decisions will be communicated on August 7, 2018 upon MID Board Approval. This will mark the start of contract negations which are expected to be completed by September 3, 2018. MID plans on utilizing the EEI or ISDA Master Agreement (if already negotiated) or the WSPP Master Agreement (if an EEI or ISDA is not currently in place).

EXHIBIT: SJCE #21
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 7-24-RE SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 7-24-RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY PRODUCTS TO SJCE - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Ashley Lewis Bernstein <Ashley.Bernstein@calpine.com>
**Sent:** Tuesday, July 24, 2018 2:12 PM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** Mitchell, Lori
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Attachments:** SJCE CY 2019 RA Bids_ Calpine Corp.pdf

Jeanne and Tony-

Enclosed are Calpine's indicative, non-binding offers for San Jose Community Energy's Resource Adequacy RFO. The bids are summarized below and detailed in the attached. We bids for open capacity from our existing fleet as well as some energy storage projects under development at our San Jose power plant locations.

***Resource Adequacy Offers - Confidential***

| Offer # | Product | Volume | Term | Price $/kW-mo |
|---|---|---|---|---|
| 1 | Greater Bay Area | Up to 100 MW | 2019 Only | $4.00 |
| 2 | Greater Bay Area | Up to 100 MW | 2019-2020 or 2019-2021 | $3.50 |
| 3 | Greater Bay Area | 105 MW Block | 2019, 2019-2020, or 2019-2021 | $4.00 |
| 4 | System | Up to 100 MW | 2019-2020 | $2.75 |

*The table above summarizes the Calpine offers for Resource Adequacy from our existing generation fleet. Offers #1, #2 and #4 are mutually exclusive and selected volumes by SJCE cannot exceed a total of 100 MW combined. Calpine has a strong preference for a minimum of a two year term for all offers. The potential units SJCE would be contracting with are Metcalf Energy Center, located in San Jose, and Gilroy Cogen, located in Gilroy.*

Please let me know if you have any questions or would like to discuss.

Thanks,
Ashley

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
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In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

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**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420

(916) 781-4229 Phone
www.ncpa.com

COMPANY CONFIDENTIALITY NOTICE:The information in this e-mail may be confidential and/or privileged and protected by work product immunity or other legal rules. No confidentiality or privilege is waived or lost by mistransmission. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail and its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your computer system. Thank you.

Calpine Corporation

4160 Dublin Blvd.
Suite 100
Dublin, CA 94568

July 24, 2018

San Jose Clean Energy RFO Team
Attn: Jeanne Sole and Tony Zimmer
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 951113

**RE: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Calpine Corporation ("Calpine"), on behalf of its wholly owned subsidiaries, is pleased to submit the enclosed indicative, non-binding for Resource Adequacy.

**Calpine Corporation**
Calpine is a full service energy company that develops power generation, owns and operates a fleet of natural gas and geothermal assets and sells both wholesale and retail throughout the United States. Calpine has a geographically and technologically diverse portfolio, which is comprised of 80 power plants operating or under construction throughout the United States and Canada. Our aggregate generation capacity totals approximately 26,000 MW. Our generation capacity includes approximately 7,119 MW of baseload capacity from our Geysers facilities and cogeneration power plants, 15,859 MW of intermediate load capacity from our combined-cycle combustion turbines, 2,985 MW of peaking capacity from our simple-cycle combustion turbines, and approximately 4 MW of capacity from solar, photovoltaic power generation technology located in New Jersey.

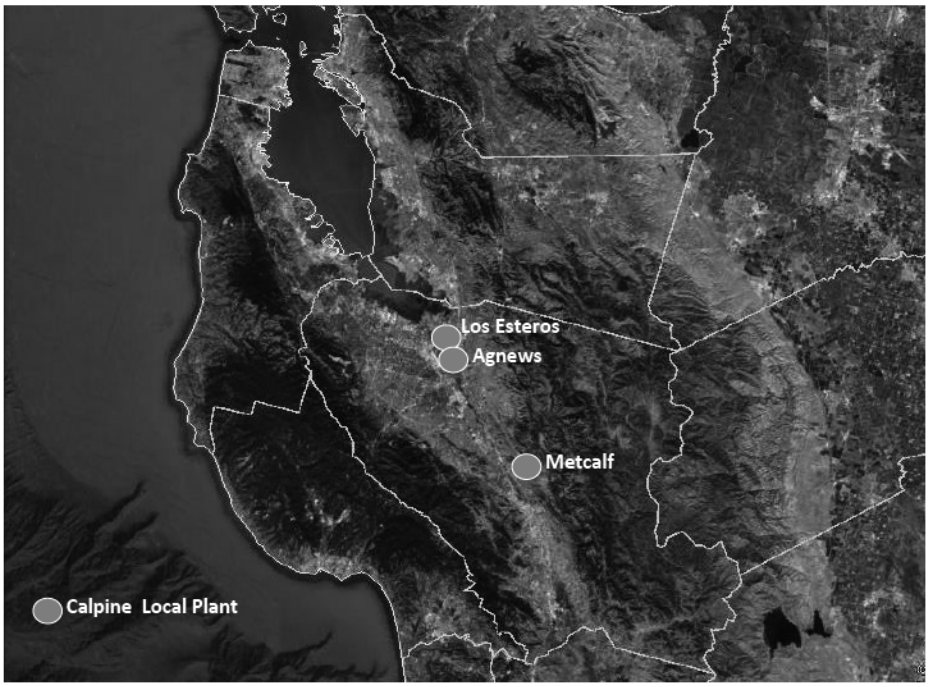
Calpine owns and operates the Geysers, which is included as a part of this bid package. The Geysers is the largest renewable geothermal complex in the United States, consisting of 13 geothermal power plants in Sonoma and Lake Counties with a net generating capacity of 725 MW. The Geysers is one of the most reliable energy sources in California, delivering extremely high availability and on-line performance and accounted for 10% of the renewable power produced in California in 2017. The Geysers provides substantial long-term support to local economies through wages, the purchase of supplies and services, property taxes and royalties.

In January 2015, Calpine launched a renewable energy group focused on the development and acquisition of energy assets throughout the United States with the goal of being a long term owner/operator of wind energy assets. Calpine's wind energy development team has over 25 years combined experience and has developed over 2.5GW of greenfield wind energy projects that are currently operating under long-term contracts with numerous utility off-takers across the United States and

Canada, including over 200 MW in California. The team has multiple greenfield development efforts, and has one 124 MW project under advanced development in New York. Calpine is committed to developing, operating and owning a first-in-class fleet of wind energy developments. Calpine is also in the process of pursuing solar photovoltaic greenfield development opportunities in California.

Calpine has been committed to sustainability since the company's inception. Calpine's fleet of clean, flexible natural gas and geothermal power plants has the lowest emissions of criteria pollutants of the 10 largest U.S. electricity generators. Calpine has distinguished itself as an environmental leader among its peers in the energy industry and has a long record of taking an active role to support state and federal initiatives to reduce air pollution and carbon emissions from power plants. Calpine was also the sole energy producer to file an amicus curiae brief in support of the U.S. EPA's authority to regulate GHG emissions from power plants in the case Murray Energy, et al. v. EPA, et al. Additionally, Calpine's Russell City Energy Center, located in Hayward, California, was the nation's first power plant to receive a federal air permit that included a limit on GHG emissions.

Calpine has a strong presence in San Jose. Calpine has three power plants located within the City: Los Esteros Critical Energy Facility, Agnews Power Plant, and Metcalf Energy Center. All three facilities are natural gas combined cycle power plants providing the City of San Jose, Silicon Valley and the entire Bay Area a reliable power supply. Calpine's three San Jose facilities have a total of 46 employees. Metcalf Energy Center, a facility that is part of our bids below, hosts 21 of the 46 employees.



CONFIDENTIAL

**Resource Adequacy Offers**

| Offer # | Product | Volume | Term | Price $/kW-mo |
|---|---|---|---|---|
| 1 | Greater Bay Area | Up to 100 MW | 2019 Only | $4.00 |
| 2 | Greater Bay Area | Up to 100 MW | 2019-2020 or 2019-2021 | $3.50 |
| 3 | Greater Bay Area | 105 MW Block | 2019, 2019-2020, or 2019-2021 | $4.00 |
| 4 | System | Up to 100 MW | 2019-2020 | $2.75 |

The table above summarizes the Calpine offers for Resource Adequacy from our existing generation fleet. Offers #1, #2 and #4 are mutually exclusive and selected volumes by SJCE cannot exceed a total of 100 MW combined. Calpine has a strong preference for a minimum of a two year term for all offers. The potential units SJCE would be contracting with are Metcalf Energy Center, located in San Jose, and Gilroy Cogen, located in Gilroy.

If SJCE is open to a longer term transaction, Calpine would be happy to discuss. Metcalf Energy Center has open capacity in 2019 and beyond. Calpine can provide refreshed pricing if SJCE is interested in longer tenor, such as five years.

CONFIDENTIAL

Calpine is actively developing energy storage projects in the City of San Jose at our existing power plant sites.

**Summary of Energy Storage Resource Adequacy Offers**

| Project | Location | Contract Start Date | Contract MW | Term | Price $/kW-mo |
|---|---|---|---|---|---|
| Milpa Power Bank | Los Esteros Critical Energy Facility San Jose, CA | December 2020 | 2-3 MW | 20 Years | $7.10 |
| Panthera Power Bank | Agnews Power Plant San Jose, CA | July 2022 | 29 MW | 20 Years | $7.95 |
| Los Esteros Battery Expansion | Los Esteros Critical Energy Facility San Jose, CA | ~2024 | Up to 50 MW | 20 Years | TBD |
| Metcalf Energy Storage | Metcalf Energy Center San Jose, CA | ~2024 | Up to 20 MW | 20 Years | TBD |

Calpine is offering all of the capacity attributes attributable to the energy storage projects in a RA only contract structure. Calpine will retain all the energy attributes and act as scheduling coordinator for the projects. Calpine is open to other structures, but is offering an RA only product here consistent with the product sought in this RFO.

These projects offer a unique opportunity for SJCE to support energy storage development in its community, support the conversion of an aging natural gas facility to energy storage, and learn more about this new technology and how it should best support California reliability.

Calpine can provide a detailed term sheet for all for any of the proposed battery projects upon request. Understanding SJCE is at the start of its launch, Calpine is open to discuss structures to accommodate SJCE's launch schedule and financial milestones as a new community choice aggregator.

***Milpa Power Bank***

Milpa Power Bank is a 2-3 MW, 4 hour duration, lithium ion battery storage project. The project is located at Calpine's existing Los Esteros Critical Energy Facility (LECEF) in San Jose. The 3 MW energy storage project will interconnect to the PG&E 115kV Los Esteros substation via the existing LECEF LGIA which has already been amended to accommodate the 3 MW energy storage project as "energy only". A CAISO request to convert the battery interconnection to Full Capacity Deliverability Status (FCDS) was submitted to CAISO's Cluster 11 process in April. We anticipate no network upgrades will be required to achieve FCDS. The proposed online date with FCDS status is December 2020, although an energy only project can be online as early as July 2019.

LECEF has a tolling agreement with PG&E through mid-2023. The energy storage project and existing combined cycle power plant will both interconnect to the same Calpine owned switchyard on the project site. The amended LGIA provides for a separate meter, resource ID and scheduling coordinator for the battery storage project.

***Panthera Power Bank***

Panthera Power Bank is a 29 MW, 4 hour duration, lithium ion battery storage project. The project is located at Calpine's existing Agnews Power Plant site in San Jose. The project would require complete decommissioning of the Agnew Power Plant facility in order to install the energy storage system. The Agnews Power Plant, built in April of 1990, was previously operated as a cogeneration facility. Today it operates as a dispatchable natural gas fired combined cycle. Panthera Power Bank would replace the power plant and leverage the existing switchyard and interconnection.

The 29 MW energy storage project will interconnect to PG&E's 115kV Los Esteros substation using Agnew Power Plant's interconnection. An interconnection request was submitted in the April CAISO Cluster 11 window to study converting the existing

interconnection to a battery operation and to ensure Full Capacity Deliverability Status of the project. We anticipate no network upgrades will be required. The proposed online date is July 2022. The Agnews Power Plant is under an agreement with PG&E until mid-2021, delaying construction until after the end of that agreement.

***Los Esteros Battery Expansion & Metcalf Energy Storage***

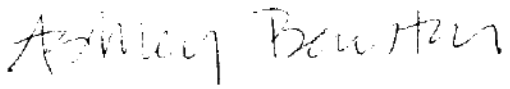
Calpine has other San Jose energy storage projects in the very early stages of development. The Los Esteros site, where Milpa Power Bank is located, could host up to an additional 50 MW of energy storage capacity. The Metcalf Energy Center site could also host an energy storage project. The site could accommodate up to 20 MW of energy storage. These projects are not yet in the CAISO interconnection queue and therefore are planned for 2024 commercial operation date. Also, neither of the proposed projects would replace the existing combined cycle power plant capacity nor use an existing interconnection capacity. Both projects are incremental, local capacity with new interconnections.

Calpine has submitted an array of offers that meet the requirements to support SJCE's mission to include local, clean and reliable resources in its portfolio, as well as providing significant ratepayer value by leveraging existing power plants, sites, and interconnections. Calpine is open to discuss other contract terms, structures, or a portfolio of transactions with SJCE as desired.

Calpine requests that SJCE keep the pricing information in this cover letter, proposal and attachments confidential. The appropriate sections have been marked "Confidential." Pricing information should be kept confidential to ensure that third party participants do not unfairly or inappropriately utilize such information to influence or impact energy markets.

Calpine looks forward to working with SJCE in connection with the RFP. If you have any questions about Calpine's proposals please do not hesitate to contact me at (925) 557-2233 or via email at ashley.bernstein@calpine.com. In the meantime, we thank you for the opportunity to participate.

Sincerely,



Ashley Bernstein
Director, Origination & Development

*The terms and conditions summarized in this response are for discussion purposes only and are not intended to and do not constitute a binding offer or agreement between the parties. The aforementioned terms and conditions are not intended to, and do not establish, any obligation with respect to any transaction described herein, and as such may not be relied upon as the basis for a contract by estoppel or otherwise. A binding agreement between the parties will arise only upon further negotiation and delivery of definitive agreements and are subject to Calpine's corporate authorization, and any other applicable Calpine subsidiary authorization. Furthermore, this document does not obligate either party to enter into any agreement or to proceed with any possible relationship or transaction. Either party may terminate discussions and/or negotiations regarding the subject of this document at any time without further liability.*

EXHIBIT: SJCE #22
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ CONFIDENTIAL - OK 8-6-2018-[1]RE SJCE Request for Offers to Sell CY 2019 Resource
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# CONFIDENTIAL - OK 8-6-2018-[1]RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 6, 2018 11:05 AM
**To:** Tony Zimmer; Arjo, Avery; Sole, Jeanne
**Cc:** RA_Solicitations; Loh, Vincent; Kowalewski, Michael; Desai, Gaurang; Wojda, Stephanie; Gong, Alice; Perry, Michael; Gomez, Robert; Chang, Kimberly
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Good Morning Tony,

PG&E is willing to accept partial volumes within a bid so long as the volumes are flat across the months and not shaped. In your example for Offer 9, the 25 MW below is acceptable as long as the volumes are 25 MWs for each month of the strip.

Thanks,

Kimberly Chang
**Pacific Gas & Electric Company | Portfolio Management**
kimberly.chang@pge.com | **Office: 415.972.5472**

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, August 03, 2018 5:08 PM
**To:** Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Avery,

I have a quick question regarding the flexibility associated with one of the PG&E bid segments. Specifically, for the CY 2019 window, would PG&E be willing to adjust the volume reflected in Offer 9 of your bid set to be 25 MW for the period of Mar 19 through Dec 19 (as compared to the 61 MW currently reflected in your bid)?

The SJCE team is meeting first thing next week to try and complete our bid evaluation, so any feedback you can provide would be great.

Thank you again,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

---

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Monday, July 23, 2018 5:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Confidential Protected Material**
**Not for Public Disclosure**
**** Do Not Forward ****

Dear Tony and Jeanne,

PG&E is pleased to submit offers for consideration in SJCE's RFO for 2019 through 2021 RA Products issued on July 11, 2018. Offers are indicative and subject to PG&E management approval, credit, and contracting.

If you have any questions or feedback concerning this transaction, please do not hesitate to contact me.

Kind regards,

Avery Arjo
Portfolio Management

Pacific Gas & Electric Company
Avery.Arjo@pge.com | 415-973-0117

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |

| | | | |
|---|---|---|---|
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income

- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

**Disclaimers:**

**SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.**

**If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.**

**The address for submitting protests is:**

**Attention: Lori Mitchell, Director**
**City of San Jose, Department of Community Energy**
**200 East Santa Clara Street, 14th Floor**
**San Jose, CA 95113**

**Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov**

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #23
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ CONFIDENTIAL - OK 8-6-2018-RE SJCE Request for Offers to Sell CY 2019 Resource Adequacy
DATE IDENT. 04/22/25 RECD.04/22/25
ALJ: GERALD F. KELLY

# CONFIDENTIAL - OK 8-6-2018-RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Monday, August 6, 2018 1:49 PM
**To:** Chang, Kimberly; Arjo, Avery; Sole, Jeanne
**Cc:** RA_Solicitations; Loh, Vincent; Kowalewski, Michael; Desai, Gaurang; Wojda, Stephanie; Gong, Alice; Perry, Michael; Gomez, Robert; Tony Zimmer
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Hi Kimberly,

Based on SJCE's review of the bids submitted by PG&E in response to SJCE's CY 2019 RFO, it looks like SJCE would like to move forward with a number of the offers submitted by PG&E (subject to SJCE's board authorization). Due to the volumes involved, perhaps we can set up a call to discuss further, and subsequent to such call, SJCE can communicate its intent to accept certain offers submitted by PG&E (subject to SJCE's board authorization). As part of our conversation, I would also like to discuss volumes for flexible capacity as well.

Do you have time tomorrow for a call to discuss?

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

---

**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 06, 2018 11:05 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>

**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly <KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Good Morning Tony,

PG&E is willing to accept partial volumes within a bid so long as the volumes are flat across the months and not shaped. In your example for Offer 9, the 25 MW below is acceptable as long as the volumes are 25 MWs for each month of the strip.

Thanks,

Kimberly Chang
**Pacific Gas & Electric Company | Portfolio Management**
kimberly.chang@pge.com | **Office: 415.972.5472**

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, August 03, 2018 5:08 PM
**To:** Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Avery,

I have a quick question regarding the flexibility associated with one of the PG&E bid segments. Specifically, for the CY 2019 window, would PG&E be willing to adjust the volume reflected in Offer 9 of your bid set to be 25 MW for the period of Mar 19 through Dec 19 (as compared to the 61 MW currently reflected in your bid)?

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Thank you again,

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Assistant General Manager, Power Management

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(916) 781-4229 Phone
www.ncpa.com

---

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Monday, July 23, 2018 5:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Confidential Protected Material**
**Not for Public Disclosure**
**** Do Not Forward ****

Dear Tony and Jeanne,

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If you have any questions or feedback concerning this transaction, please do not hesitate to contact me.

Kind regards,

Avery Arjo
Portfolio Management
Pacific Gas & Electric Company
Avery.Arjo@pge.com | 415-973-0117

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
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| Feb-19 | 12.0 | 5.0 | 7.0 |
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| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

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**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

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- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations

- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

**Disclaimers:**

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**If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.**

**The address for submitting protests is:**

**Attention: Lori Mitchell, Director**
**City of San Jose, Department of Community Energy**
**200 East Santa Clara Street, 14th Floor**
**San Jose, CA 95113**

**Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov**

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #24
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ CONFIDENTIAL - OK 8-16-2018-RE SJCE Request for Offers to Sell CY 2019 Resource Adequacy
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# CONFIDENTIAL - OK 8-16-2018-RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 RESOURCE ADEQUACY

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Thursday, August 16, 2018 9:54 AM
**To:** Tony Zimmer; Chang, Kimberly; Sole, Jeanne; Morris, Kelly; Mitchell, Lori
**Cc:** RA_Solicitations; Loh, Vincent; Kowalewski, Michael; Desai, Gaurang; Wojda, Stephanie; Gong, Alice; Perry, Michael; Gomez, Robert
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Hi Tony,

Please see below PG&E's updated offers for 2019. CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval, credit, and contracting. PG&E will confirm volumes upon a definitive shortlisting, subject to availability.

| System RA (NP 26) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 1 (MW) | | | 79 | 253 | 380 | 502 | | 571 | | | 284 | 337 |
| Offer Price - 1 ($/kW-Month) | | | $2.68 | $2.68 | $3.50 | $5.75 | | $6.65 | | | $2.68 | $2.68 |

| Local RA (Bay Area) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 2 (MW) | | | 40 | 40 | 40 | 40 | | 40 | | | 40 | 40 |
| Offer Price - 2 ($/kW-Month) | | | $3.50 | $3.50 | $3.50 | $5.75 | | $6.65 | | | $3.80 | $3.80 |

| Local RA (Other Area) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 3 (MW) | | | 160 | 148 | 148 | 148 | | 148 | | | 160 | 160 |
| Offer Price - 3 ($/kW-Month) | | | $3.50 | $3.50 | $3.50 | $5.75 | | $6.65 | | | $3.80 | $3.80 |

Please let me know if you have any questions.

Kind regards,

Avery Arjo
*Portfolio Management*
*Pacific Gas & Electric Company*
*Avery.Arjo@pge.com | 415-973-0117*

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Saturday, August 11, 2018 9:37 AM
**To:** Chang, Kimberly <KWCC@pge.com>; Arjo, Avery <A4AQ@pge.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Lori Mitchell <Lori.Mitchell@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

Hello Kimberly,

San Jose Clean Energy also received its initial Resource Adequacy assignment from the CPUC yesterday, and based on such has refined the volumes and products SJCE is seeking to purchase. More specifically, as PG&E re-evaluates its capacity portfolio and the offers PG&E previously provided to SJCE, can PG&E please refresh your bids based on the following volumes that SJCE is now seeking to purchase:

- Volume of RA Product SJCE is seeking to Purchase

| Product Type | Measure | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| NP26 System RA | MW | 79.00 | 253.00 | 380.00 | 502.00 | 537.00 | 571.00 | 646.00 | 359.00 | 284.00 | 337.00 |
| GBA Local RA | MW | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 |
| PG&E Other Local RA | MW | 160.00 | 148.00 | 148.00 | 148.00 | 148.00 | 148.00 | 148.00 | 148.00 | 160.00 | 160.00 |
| Flexible RA | MW | 193.00 | 145.00 | 169.00 | 115.00 | 101.00 | 130.00 | 202.00 | 164.00 | 284.00 | 315.00 |

If you can please refresh your offer to SJCE taking into consideration the volumes listed above, that would be helpful. As discussed previously, SJCE will be enabled to transact capacity on 8/14, and is working diligently with PG&E staff to complete development of an EEI between SJCE and PG&E for this purpose.

Please feel free to contact me if you have any questions, or comments. SJCE looks forward to PG&E's feedback and refreshed set of offers.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**

*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Friday, August 10, 2018 5:15 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly <KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Afternoon Tony, Jeanne,

PG&E received its initial allocation for 2019 RA Requirement today and is re-evaluating its outstanding indicative offers in light of the newly available information. An update will be provided to prospective buyers by Tuesday, August 14.

Kimberly Chang
**Pacific Gas & Electric Company l Portfolio Management**
**kimberly.chang@pge.com l Office: 415.972.5472**

---

**From:** Chang, Kimberly
**Sent:** Thursday, August 09, 2018 11:42 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Tony, Jeanne,

Following up on our call earlier this week, is SJCE able to send PG&E a confirmation for Offers SJCE would like to lift and does SJCE have updated quantities of what they are seeing for flex in the offers?

Additionally, after management review, PG&E revises offers 4 and 5 as follows:

- Remove all offered quantities for months of July, August, and September 2019.
- All other months of offer 4 and 5 are available.
- Offers 4 and 5 are no longer contingent on full acceptance of offer 3.

Let me know if you have questions or would like to further discuss.

Kimberly Chang
**Pacific Gas & Electric Company l Portfolio Management**
kimberly.chang@pge.com **l Office: 415.972.5472**

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, August 06, 2018 5:30 PM
**To:** Chang, Kimberly <KWCC@pge.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Kimberly,

Thank you for the timely response. Tomorrow after 2:00 PM works good for us. I will send you a meeting request with conference call information. Please feel free to invite any of the other PG&E team members who you would like to participate.

Thank you again,

Tony Zimmer
Assistant General Manager, Power Management

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(916) 781-4229 Phone
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**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 06, 2018 3:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>;

Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly <KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Thank you Tony.

Does tomorrow afternoon work after 2pm for SJCE? If not, would you be able to provide us with some availability during the week and we can see what time works for both?

Kimberly Chang
**Pacific Gas & Electric Company | Portfolio Management**
**kimberly.chang@pge.com | Office: 415.972.5472**

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, August 06, 2018 1:49 PM
**To:** Chang, Kimberly <KWCC@pge.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

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Hi Kimberly,

Based on SJCE's review of the bids submitted by PG&E in response to SJCE's CY 2019 RFO, it looks like SJCE would like to move forward with a number of the offers submitted by PG&E (subject to SJCE's board authorization). Due to the volumes involved, perhaps we can set up a call to discuss further, and subsequent to such call, SJCE can communicate its intent to accept certain offers submitted by PG&E (subject to SJCE's board authorization). As part of our conversation, I would also like to discuss volumes for flexible capacity as well.

Do you have time tomorrow for a call to discuss?

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

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---

**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 06, 2018 11:05 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly <KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Good Morning Tony,

PG&E is willing to accept partial volumes within a bid so long as the volumes are flat across the months and not shaped. In your example for Offer 9, the 25 MW below is acceptable as long as the volumes are 25 MWs for each month of the strip.

Thanks,

Kimberly Chang
**Pacific Gas & Electric Company | Portfolio Management**
**kimberly.chang@pge.com | Office: 415.972.5472**

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, August 03, 2018 5:08 PM
**To:** Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

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Hi Avery,

I have a quick question regarding the flexibility associated with one of the PG&E bid segments. Specifically, for the CY 2019 window, would PG&E be willing to adjust the volume reflected in Offer 9 of your bid set to be 25 MW for the period of Mar 19 through Dec 19 (as compared to the 61 MW currently reflected in your bid)?

The SJCE team is meeting first thing next week to try and complete our bid evaluation, so any feedback you can provide would be great.

Thank you again,

Tony Zimmer
Assistant General Manager, Power Management

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---

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Monday, July 23, 2018 5:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Confidential Protected Material**
**Not for Public Disclosure**
**** Do Not Forward ****

Dear Tony and Jeanne,

PG&E is pleased to submit offers for consideration in SJCE's RFO for 2019 through 2021 RA Products issued on July 11, 2018. Offers are indicative and subject to PG&E management approval, credit, and contracting.

If you have any questions or feedback concerning this transaction, please do not hesitate to contact me.

Kind regards,

Avery Arjo
Portfolio Management
Pacific Gas & Electric Company
Avery.Arjo@pge.com | 415-973-0117

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |

| | | | |
|---|---|---|---|
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

**Disclaimers:**

**SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.**

**If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.**

**The address for submitting protests is:**

**Attention: Lori Mitchell, Director**
**City of San Jose, Department of Community Energy**
**200 East Santa Clara Street, 14th Floor**
**San Jose, CA 95113**

**Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov**

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
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EXHIBIT: SJCE #25
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ CONFIDENTIAL - PG&E Bid Communications
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# CONFIDENTIAL - PG&E BID COMMUNICATIONS

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

## Morris, Kelly

**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** August 16, 2018 9:54 AM
**To:** Tony Zimmer; Chang, Kimberly; Sole, Jeanne; Morris, Kelly; Mitchell, Lori
**Cc:** RA_Solicitations; Loh, Vincent; Kowalewski, Michael; Desai, Gaurang; Wojda, Stephanie; Gong, Alice; Perry, Michael; Gomez, Robert
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Hi Tony,

Please see below PG&E's updated offers for 2019. CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval, credit, and contracting. PG&E will confirm volumes upon a definitive shortlisting, subject to availability.

| System RA (NP 26) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 1 (MW) | | | 79 | 253 | 380 | 502 | | 571 | | | 284 | 337 |
| Offer Price - 1 ($/kW-Month) | | | $2.68 | $2.68 | $3.50 | $5.75 | | $6.65 | | | $2.68 | $2.68 |

| Local RA (Bay Area) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 2 (MW) | | | 40 | 40 | 40 | 40 | | 40 | | | 40 | 40 |
| Offer Price - 2 ($/kW-Month) | | | $3.50 | $3.50 | $3.50 | $5.75 | | $6.65 | | | $3.80 | $3.80 |

| Local RA (Other Area) | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Offer Quantity - 3 (MW) | | | 160 | 148 | 148 | 148 | | 148 | | | 160 | 160 |
| Offer Price - 3 ($/kW-Month) | | | $3.50 | $3.50 | $3.50 | $5.75 | | $6.65 | | | $3.80 | $3.80 |

Please let me know if you have any questions.

Kind regards,

Avery Arjo
*Portfolio Management*
*Pacific Gas & Electric Company*
*Avery.Arjo@pge.com | 415-973-0117*

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**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

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- Volume of RA Product SJCE is seeking to Purchase

| Product Type | Measure | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| NP26 System RA | MW | 79.00 | 253.00 | 380.00 | 502.00 | 537.00 | 571.00 | 646.00 | 359.00 | 284.00 | 337.00 |
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| Flexible RA | MW | 193.00 | 145.00 | 169.00 | 115.00 | 101.00 | 130.00 | 202.00 | 164.00 | 284.00 | 315.00 |

If you can please refresh your offer to SJCE taking into consideration the volumes listed above, that would be helpful. As discussed previously, SJCE will be enabled to transact capacity on 8/14, and is working diligently with PG&E staff to complete development of an EEI between SJCE and PG&E for this purpose.

Please feel free to contact me if you have any questions, or comments. SJCE looks forward to PG&E's feedback and refreshed set of offers.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

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**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Afternoon Tony, Jeanne,

PG&E received its initial allocation for 2019 RA Requirement today and is re-evaluating its outstanding indicative offers in light of the newly available information. An update will be provided to prospective buyers by Tuesday, August 14.

Kimberly Chang
**Pacific Gas & Electric Company I Portfolio Management**
**kimberly.chang@pge.com I Office: 415.972.5472**

---

**From:** Chang, Kimberly
**Sent:** Thursday, August 09, 2018 11:42 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

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Additionally, after management review, PG&E revises offers 4 and 5 as follows:

- Remove all offered quantities for months of July, August, and September 2019.
- All other months of offer 4 and 5 are available.
- Offers 4 and 5 are no longer contingent on full acceptance of offer 3.

Let me know if you have questions or would like to further discuss.

Kimberly Chang
**Pacific Gas & Electric Company l Portfolio Management**
kimberly.chang@pge.com l **Office: 415.972.5472**

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, August 06, 2018 5:30 PM
**To:** Chang, Kimberly <KWCC@pge.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

Hi Kimberly,

Thank you for the timely response. Tomorrow after 2:00 PM works good for us. I will send you a meeting request with conference call information. Please feel free to invite any of the other PG&E team members who you would like to participate.

Thank you again,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 06, 2018 3:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly

<KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Thank you Tony.

Does tomorrow afternoon work after 2pm for SJCE? If not, would you be able to provide us with some availability during the week and we can see what time works for both?

Kimberly Chang
**Pacific Gas & Electric Company I Portfolio Management**
**kimberly.chang@pge.com I Office: 415.972.5472**

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, August 06, 2018 1:49 PM
**To:** Chang, Kimberly <KWCC@pge.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Kimberly,

Based on SJCE's review of the bids submitted by PG&E in response to SJCE's CY 2019 RFO, it looks like SJCE would like to move forward with a number of the offers submitted by PG&E (subject to SJCE's board authorization). Due to the volumes involved, perhaps we can set up a call to discuss further, and subsequent to such call, SJCE can communicate its intent to accept certain offers submitted by PG&E (subject to SJCE's board authorization). As part of our conversation, I would also like to discuss volumes for flexible capacity as well.

Do you have time tomorrow for a call to discuss?

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**From:** Chang, Kimberly <KWCC@pge.com>
**Sent:** Monday, August 06, 2018 11:05 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Chang, Kimberly <KWCC@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

Good Morning Tony,

PG&E is willing to accept partial volumes within a bid so long as the volumes are flat across the months and not shaped. In your example for Offer 9, the 25 MW below is acceptable as long as the volumes are 25 MWs for each month of the strip.

Thanks,

Kimberly Chang
**Pacific Gas & Electric Company l Portfolio Management**
**kimberly.chang@pge.com l Office: 415.972.5472**

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, August 03, 2018 5:08 PM
**To:** Arjo, Avery <A4AQ@pge.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Avery,

I have a quick question regarding the flexibility associated with one of the PG&E bid segments. Specifically, for the CY 2019 window, would PG&E be willing to adjust the volume reflected in Offer 9 of your bid set to be 25 MW for the period of Mar 19 through Dec 19 (as compared to the 61 MW currently reflected in your bid)?

The SJCE team is meeting first thing next week to try and complete our bid evaluation, so any feedback you can provide would be great.

Thank you again,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**From:** Arjo, Avery <A4AQ@pge.com>
**Sent:** Monday, July 23, 2018 5:51 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Chang, Kimberly <KWCC@pge.com>; Loh, Vincent <VKL2@pge.com>; Kowalewski, Michael <MSK4@pge.com>; Desai, Gaurang <GVD2@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Gong, Alice <AxL3@pge.com>; Perry, Michael <MOP4@pge.com>; Gomez, Robert <RSGa@pge.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE

**Confidential Protected Material**
**Not for Public Disclosure**
**** Do Not Forward ****

Dear Tony and Jeanne,

PG&E is pleased to submit offers for consideration in SJCE's RFO for 2019 through 2021 RA Products issued on July 11, 2018. Offers are indicative and subject to PG&E management approval, credit, and contracting.

If you have any questions or feedback concerning this transaction, please do not hesitate to contact me.

Kind regards,

Avery Arjo
Portfolio Management
Pacific Gas & Electric Company
Avery.Arjo@pge.com | 415-973-0117

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, July 11, 2018 10:50 AM
**To:** Tony Zimmer
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam; Mitchell, Lori; Sole, Jeanne
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE
**Importance:** High

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****

**Date Issued: July 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) |
|---|---|---|---|
| Jan-19 | 12.0 | 5.0 | 7.0 |
| Feb-19 | 12.0 | 5.0 | 7.0 |
| Mar-19 | 147.0 | 185.0 | 278.0 |
| Apr-19 | 253.0 | 185.0 | 278.0 |
| May-19 | 360.0 | 185.0 | 278.0 |

| | | | |
|---|---|---|---|
| Jun-19 | 400.0 | 185.0 | 278.0 |
| Jul-19 | 464.0 | 185.0 | 278.0 |
| Aug-19 | 467.0 | 185.0 | 278.0 |
| Sept-19 | 484.0 | 185.0 | 278.0 |
| Oct-19 | 264.0 | 185.0 | 278.0 |
| Nov-19 | 200.0 | 185.0 | 278.0 |
| Dec-19 | 297.0 | 185.0 | 278.0 |

In addition to the Resource Adequacy Products described herein for CY 2019, SJCE also welcomes offers for CY 2020 and CY 2021 Resource Adequacy Products, where the MW volumes to be purchased by SJCE during these periods are estimated to be similar in size to the MW volumes sought for CY 2019 (with the exception of Jan. and Feb., which are estimated to be approximately equal to the MW volumes reflected for May 2019).

SJCE will also consider longer term proposals to provide cost-effective solutions to SJCE's long term RA needs in a manner that benefits the local San Jose community, and/or provides information about new technologies or innovative approaches to meeting SJCE's reliability needs.

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to July 24, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation. If SJCE elects to enter into any confirmation for a transaction as a result of this solicitation, SJCE will not be authorized to formally enter into a confirmation for a transaction until mid-August 2018, subject to such authorization being granted by SJCE's jurisdictional authority.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

**Disclaimers:**

**SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.**

**If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.**

**The address for submitting protests is:**

**Attention: Lori Mitchell, Director**
**City of San Jose, Department of Community Energy**
**200 East Santa Clara Street, 14th Floor**
**San Jose, CA 95113**

**Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov**

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**CONFIDENTIAL : These are indicative offers. Any agreement(s) between the parties are subject to PG&E senior management approval and the prior execution of definitive documents.**

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

Offer 1

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | PG&E | | | | | | | | | | | |
| **Quantity Requested (MW):** | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| **Offer Quantity (MW):** | 12 | | | | | | | | | | | |
| **Offer Price ($/kW-Month):** | $ 2.18 | | | | | | | | | | | |
| **Flexible RA (Yes or No):** | To Be Discussed | | | | | | | | | | | |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **North or South of Path 26:** | North | | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | 4 | | | | | | | | | | | |
| **Requires Import Capability Allocation (Yes or No):** | No | | | | | | | | | | | |
| **Import Branch Group (if applicable):** | | | | | | | | | | | | |

**System Resource Adequacy**

Offer 2

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | PG&E | | | | | | | | | | |
| **Quantity Requested (MW):** | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| **Offer Quantity (MW):** | | 12 | | | | | | | | | | |
| **Offer Price ($/kW-Month):** | | $ 2.18 | | | | | | | | | | |
| **Flexible RA (Yes or No):** | | To Be Discussed | | | | | | | | | | |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **North or South of Path 26:** | | North | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | | 4 | | | | | | | | | | |
| **Requires Import Capability Allocation (Yes or No):** | | No | | | | | | | | | | |
| **Import Branch Group (if applicable):** | | | | | | | | | | | | |

**System Resource Adequacy**

Offer 3

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| **Offer Quantity (MW):** | | | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 |
| **Offer Price ($/kW-Month):** | | | $ 2.18 | $ 1.68 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.38 | $ 1.68 | $ 1.68 |
| **Flexible RA (Yes or No):** | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **North or South of Path 26:** | | | North | North | North | North | North | North | North | North | North | North |
| **Resource Category (1, 2, 3, 4):** | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| **Requires Import Capability Allocation (Yes or No):** | | | No | No | No | No | No | No | No | No | No | No |
| **Import Branch Group (if applicable):** | | | | | | | | | | | | |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**System Resource Adequacy**

Offer 4 - Contingent on Accepting Offer 3 in full.

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | 12 | 12 | 147 | 253 | 360 | 400 | 464 | 467 | 484 | 264 | 200 | 297 |
| **Offer Quantity (MW):** | | | | 52 | 105 | 125 | 157 | 159 | 167 | 57 | 25 | 74 |
| **Offer Price ($/kW-Month):** | | | | $ 1.93 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 2.63 | $ 1.93 | $ 1.93 |
| **Flexible RA (Yes or No):** | | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **North or South of Path 26:** | | | | North | North | North | North | North | North | North | North | North |
| **Resource Category (1, 2, 3, 4):** | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| **Requires Import Capability Allocation (Yes or No):** | | | | No | No | No | No | No | No | No | No | No |
| **Import Branch Group (if applicable):** | | | | | | | | | | | | |

Contingent on full acceptance of Offer 3. Offer submitted as strip. Buyer must take all months of the product and may not select monthly

**System Resource Adequacy**

Offer 5 - Contingent on Accepting Offer 3 in full.

| Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|

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| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | **12** | **12** | **147** | **253** | **360** | **400** | **464** | **467** | **484** | **264** | **200** | **297** |
| **Offer Quantity (MW):** | | | | 52 | 105 | 125 | 157 | 159 | 167 | 57 | 25 | 74 |
| **Offer Price ($/kW-Month):** | | | | $ 2.18 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 2.88 | $ 2.18 | $ 2.18 |
| **Flexible RA (Yes or No):** | | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **North or South of Path 26:** | | | | North | North | North | North | North | North | North | North | North |
| **Resource Category (1, 2, 3, 4):** | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| **Requires Import Capability Allocation (Yes or No):** | | | | No | No | No | No | No | No | No | No | No |
| **Import Branch Group (if applicable):** | | | | | | | | | | | | |

Contingent on full acceptance of Offer 3. Offer submitted as strip. Buyer must take all months of the product and may not select monthly

**Local Resource Adequacy - Greater Bay Area**

Offer 6

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | PG&E | | | | | | | | | | | |
| **Quantity Requested (MW):** | **5** | **5** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** |
| **Offer Quantity (MW):** | 5 | | | | | | | | | | | |
| **Offer Price ($/kW-Month):** | $3.00 | | | | | | | | | | | |
| **Flexible RA (Yes or No):** | To Be Discussed | | | | | | | | | | | |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | 4 | | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

Offer 7

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | PG&E | | | | | | | | | | |
| **Quantity Requested (MW):** | **5** | **5** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** |
| **Offer Quantity (MW):** | | 5 | | | | | | | | | | |
| **Offer Price ($/kW-Month):** | | $3.00 | | | | | | | | | | |
| **Flexible RA (Yes or No):** | | To Be Discussed | | | | | | | | | | |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | | 4 | | | | | | | | | | |

**Local Resource Adequacy - Greater Bay Area**

Offer 8

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | **5** | **5** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** |
| **Offer Quantity (MW):** | | | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 |
| **Offer Price ($/kW-Month):** | | | $ 2.50 | $ 2.50 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.80 | $ 2.80 | $ 2.80 |
| **Flexible RA (Yes or No):** | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

Offer 9

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | **5** | **5** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** |
| **Offer Quantity (MW):** | | | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 | 61 |
| **Offer Price ($/kW-Month):** | | | $ 2.75 | $ 2.75 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 3.05 | $ 3.05 | $ 3.05 |
| **Flexible RA (Yes or No):** | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |
| **Resource Category (1, 2, 3, 4):** | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Greater Bay Area**

Offer 10

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| **Quantity Requested (MW):** | **5** | **5** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** | **185** |
| **Offer Quantity (MW):** | | | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 | 63 |
| **Offer Price ($/kW-Month):** | | | $ 3.00 | $ 3.00 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 3.30 | $ 3.30 | $ 3.30 |
| **Flexible RA (Yes or No):** | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| **Flexible RA Category (if applicable):** | | | | | | | | | | | | |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

CONFIDENTIAL

| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|

**Local Resource Adequacy - Other PG&E Areas**

Offer 11

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | PG&E | | | | | | | | | | | |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | 7 | | | | | | | | | | | |
| Offer Price ($/kW-Month): | $3.00 | | | | | | | | | | | |
| Flexible RA (Yes or No): | To Be Discussed | | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | 4 | | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

Offer 12

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | PG&E | | | | | | | | | | |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | 7 | | | | | | | | | | |
| Offer Price ($/kW-Month): | | $3.00 | | | | | | | | | | |
| Flexible RA (Yes or No): | | To Be Discussed | | | | | | | | | | |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | 4 | | | | | | | | | | |

**Local Resource Adequacy - Other PG&E Areas**

Offer 13

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | | | $ 2.50 | $ 2.50 | $ 2.50 | $ 4.75 | $ 6.00 | $ 6.00 | $ 6.00 | $ 2.80 | $ 2.80 | $ 2.80 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

Offer 14

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 | 92 |
| Offer Price ($/kW-Month): | | | $ 2.75 | $ 2.75 | $ 2.75 | $ 5.00 | $ 6.25 | $ 6.25 | $ 6.25 | $ 3.05 | $ 3.05 | $ 3.05 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

**Local Resource Adequacy - Other PG&E Areas**

Offer 15

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Seller: | | | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E | PG&E |
| Quantity Requested (MW): | 7 | 7 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 | 278 |
| Offer Quantity (MW): | | | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 | 94 |
| Offer Price ($/kW-Month): | | | $ 3.00 | $ 3.00 | $ 3.00 | $ 5.25 | $ 6.50 | $ 6.50 | $ 6.50 | $ 3.30 | $ 3.30 | $ 3.30 |
| Flexible RA (Yes or No): | | | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discusse | To Be Discussed |
| Flexible RA Category (if applicable): | | | | | | | | | | | | |
| Resource Category (1, 2, 3, 4): | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |

Offer submitted as strip. Buyer must take all months of the product and may not select monthly deliveries only.

EXHIBIT: SJCE #26
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 9-6-18-SFPUC-Request for Bids - San Francisco Public Utilities Commission (SFPUC) - - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-6-18-SFPUC-REQUEST FOR BIDS - SAN FRANCISCO PUBLIC UTILITIES COMMISSION (SFPUC) - - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Thursday, September 6, 2018 3:51 PM
**Subject:** Request for Bids - San Francisco Public Utilities Commission (SFPUC) - CleanPowerSF - 2019 Resource Adequacy Supplies
**Attachments:** CleanPowerSF RFB_2019 RA Supplies.pdf; CleanPowerSF_2019 RA_Exhibit A.xlsx

Good Afternoon,

The San Francisco Public Utilities Commission (SFPUC) - CleanPowerSF issues this Request for Bids (RFB) to sell System, Local, and Flexible Resource Adequacy capacity for January – December of 2019.

The detailed offer and response procedure are provided in the attached documents. **Please submit your responses by 5:00pm PDT on Friday, September 14th.**

Thanks,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

# City and County of San Francisco – CleanPowerSF
# Request for Bids
# 2019 Resource Adequacy Supplies

September 6, 2018

## Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates CleanPowerSF, San Francisco's Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP).

CleanPowerSF issues this Request for Bids (RFB) to sell system, local, and flexible resource adequacy (RA) for January – December of 2019. Bids are requested in $/kW-month.

| Requirement | Specification |
|---|---|
| Capacity Product | Contingent firm |
| Capacity Attributes | CleanPowerSF is selling RA Capacity that will satisfy CPUC and CAISO requirements for Load Serving Entities for the following RA capacity attributes:<br>- **System RA Capacity:** Qualified generation resources located within NP 15<br>- **Flexible RA Capacity:** Qualified generation resources located within NP 15 and qualify for the CPUC and CAISO defined flexible attribute (preferably flexible category 1 but will consider flexible categories 2 and 3)<br>- **Local RA Capacity:** Quantified generation resources located within the PG&E "Greater Bay Area" and the "Other PG&E" Local Area and local capacity areas. |
| Minimum Volume | 1 MW, AC |
| Term | Up to 12 months with deliveries commencing no sooner than January 1, 2019. |
| Capacity Locations | Generator resources located within the CPUC and CAISO defined geographic boundaries (i.e., North of Path 26, Other PG&E Local Area, and Greater Bay Area). |
| Proposed Pricing | Bids into this solicitation shall be offered on a fixed $/kW-month basis, for each month of the proposed contract term. |

## Proposal Timing

The proposed bids must be submitted to powerpurchasing@sfwater.org by **5:00pm PPT on Friday, September 14, 2018.**

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

**Enabling Agreement Requirement**

The SFPUC purchases and sells energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation or a confirmation under an existing Master Agreement. The SFPUC requires the following amendments to the confirmation:

- Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.
- Section 24 of the WSPP Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."
- City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- Prohibition on Political Activity. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Confirmation. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City Controller in its performance of this Confirmation. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this confirmation, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The City Controller will not consider Seller's use of profit from the performance of this Confirmation as a violation of this Section.

**How to Respond**

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with CleanPowerSF.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- Please complete and submit multiple copies of Exhibit A for multiple products/periods.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.

**Responses and/or questions should be addressed to: powerpurchasing@sfwater.org**

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

**Post-Response Negotiations**

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

**Disclaimer and Confidentiality**

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

# CleanPowerSF
# Resource Adequacy 2019 Request for Bids (RA RFB)
# 9/6/2018

| Instructions |
|---|
| After reviewing the 2019 RA RFB , please complete and submit this Bid Form to powerpurchasing@sfwater.org by**5:00 pm PDT on Friday, September 14, 2018.** |
| The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP) and sells RA under the WSPP agreement. Bidding entities are required to be a WSPP member to participate in the RFB. |
| The tab, titled "Exhibit A-1 - 2019 Bids," is included to facilitate exchange of RA during January through December 2019. |
| Please add additional sections and rows to any tab as necessary to accomodate multiple product offers and tiered offer pricing. |
| Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other. |
| Please direct any questions to powerpurchasing@sfwater.org. |

| Participant Information | |
|---|---|
| Organization Name | |
| Address (Street, City, State, ZIP) | |
| Authorized Participant Name | |
| Title | |
| Email | |
| Phone | |
| Parent Company, if applicable | |
| Other | |

# Exhibit A-1: 2019 Bids to Purchase

*Please complete the table below for the Bid Volumes and Prices by Month.*
*If submitting multiple Bids, please indicate by adding columns/rows or creating a new tab in the Exhibit Workbook as necessary.*
*Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other.*

| | = Information to be completed by Bidder |
|---|---|

| Product | North of Path 26 - System Resource Adequacy | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Greater Bay Area | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Other PG&E Areas | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

EXHIBIT: SJCE #27
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 9-14-2018-CleanPower SF Request for Bids - San Jose Clean Energy (SJCE) Offer -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-14-2018-CLEANPOWER SF REQUEST FOR BIDS - SAN JOSE CLEAN ENERGY (SJCE) OFFER - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Friday, September 14, 2018 4:15 PM
**To:** powerpurchasing@sfwater.org
**Cc:** Tony Zimmer; Sole, Jeanne; Morris, Kelly; Mulberg, Erin
**Subject:** CleanPower SF Request for Bids - San Jose Clean Energy (SJCE) Offer
**Attachments:** CleanPowerSF_2019 RA_Exhibit A (SJCE Offer).xlsx

**Importance:** High

To Whom It May Concern,

In response to the request for bids issued by CleanPower SF, dated September 6, 2018, please find attached for your consideration an offer submitted by San Jose Clean Energy (SJCE) to purchase Resource Adequacy products from CleanPower SF.

San Jose Clean Energy submits these bid responses subject to receipt of any necessary approvals from its Risk Oversight Committee, qualifying CleanPowerSF as a counterparty, and reaching agreement on mutually acceptable contract terms.

Please feel free to contact me if you have any questions regarding the attached offer, or if you need any additional information.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

# CleanPowerSF
# Resource Adequacy 2019 Request for Bids (RA RFB)
# 9/6/2018

| Instructions |
|---|
| After reviewing the 2019 RA RFB , please complete and submit this Bid Form to powerpurchasing@sfwater.org by**5:00 pm PDT on Friday, September 14, 2018.** |
| The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP) and sells RA under the WSPP agreement. Bidding entities are required to be a WSPP member to participate in the RFB. |
| The tab, titled "Exhibit A-1 - 2019 Bids," is included to facilitate exchange of RA during January through December 2019. |
| Please add additional sections and rows to any tab as necessary to accomodate multiple product offers and tiered offer pricing. |
| Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other. |
| Please direct any questions to powerpurchasing@sfwater.org. |

| Participant Information | |
|---|---|
| Organization Name | San Jose Clean Energy |
| Address (Street, City, State, ZIP) | 200 E. Santa Clara Street, 14th Floor' |
| Authorized Participant Name | Jeanne M. Sole |
| Title | Deputy Director of Power Resources |
| Email | jeanne.sole@sanjoseca.gov |
| Phone | 408-535-4867 |
| Parent Company, if applicable | |
| Other | Alternative Contact: Tony Zimmer, 916-781-4229, tony.zimmer@ncpa.com |

# Exhibit A-1: 2019 Bids to Purchase

*Please complete the table below for the Bid Volumes and Prices by Month.*
*If submitting multiple Bids, please indicate by adding columns/rows or creating a new tab in the Exhibit Workbook as necessary.*
*Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other.*

| | = Information to be completed by Bidder |
|---|---|

| Product | North of Path 26 - System Resource Adequacy | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | The quantity of Flexible can be distributed among the three products offered. | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 536.00 | | 645.00 | 359.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $3.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | 101.00 | | 202.00 | 164.00 | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | $0.10 | | $0.10 | $0.10 | | |

| Product | Local Resource Adequacy - Greater Bay Area | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 39.00 | | 39.00 | 39.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $4.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Other PG&E Areas | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 147.00 | | 147.00 | 147.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $4.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

Note 1: San Jose Clean Energy submits these bid responses subject to receipt of any necessary approvals from its Risk Oversight Committee, qualifying CleanPowerSF as a counterparty, and reaching agreement on mutually acceptable terms.

EXHIBIT: SJCE #28
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/10-26-18 PCE solicitation - CONFIDENTIAL.
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-26-18 PCE SOLICITATION - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Chelsea Keys <ckeys@peninsulacleanenergy.com>
**Sent:** Monday, October 29, 2018 11:27 AM
**To:** Tony Zimmer
**Cc:** PCE Procurement; Sole, Jeanne; Morris, Kelly
**Subject:** Re: SJCE Offer - PCE PG&E Other Solicitation
**Attachments:** image001.jpg

Hello Tony and Jeanne,

Thank you for participating in PCE's last-minute solicitation. We reviewed your offer and I'd like to provide you with a counteroffer for your consideration. I know SJCE doesn't have much of a need in January but if you can accommodate taking a bit more in January we can supply you with the following volumes for February, July and October. Please give me a call to discuss further. I can have a confirm similar to our pending agreement to you shortly.

| JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEPT | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 25 | 14.95 | | | | | 11 | | | 6 | | |
| $ 5.50 | $ 5.50 | | | | | $ 6.30 | | | $ 5.50 | | |

Thank you,

Chelsea Keys
Power Resources Manager
Peninsula Clean Energy
ckeys@peninsulacleanenergy.com
(650) 382-2002

Visit us at:
www.peninsulacleanenergy.com

On Fri, Oct 26, 2018 at 4:15 PM Tony Zimmer <Tony.Zimmer@ncpa.com> wrote:

> Hi Chelsea,

Please see SJCE's offer to purchase PG&E Other Local RA in response to Peninsula Clean Energy's RA solicitation dated 10/26/2018:

- SJCE to Purchase the following:
    - Product: PG&E Other Local RA
        - Jan-19: 4.6 MW @ $3.50 / kW-month
        - Feb-19: 30.0 MW @ $3.50 / kW-month
        - Jul-19: 30.0 MW @ $6.30 / kW-month
        - Oct-19: 30 MW @ $ 3.85 / kW-month

Please feel free to contact Jeanne or I if you have any questions.

Thank you for consideration of SJCE's offer.

Tony Zimmer

Assistant General Manager, Power Management

**Northern California Power Agency**

*A Public Agency*

651 Commerce Drive

Roseville, CA 95678-6420

(916) 781-4229 Phone

www.ncpa.com

EXHIBIT: SJCE #29
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/19- 09.17.18 Calpine RA Local Mar-Dec 2019 FullExec 18-113-03 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 19- 09.17.18 CALPINE RA LOCAL MAR-DEC 2019 FULLEXEC 18-113-03 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL



**TRANSACTION CONFIRMATION**
**RESOURCE ADEQUACY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Calpine Energy Services, L.P.** ("Seller") and **the City of San José** ("Buyer"), each individually a "Party" and together the "Parties", dated as of September 17, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the Western Systems Power Pool Agreement (Effective Version: June 21, 2018), along with any schedules and amendments thereto (including by this Confirmation) (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern with respect to the Transaction. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1. DEFINITIONS**

**1.1** "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more of intermediaries, controls, or is controlled by, or is under common control with that Party. 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" is defined in the introductory paragraph hereof.

**1.3** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

**1.4** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

**1.5** "Availability Incentive Payments" is defined in the Tariff.

**1.6** "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

**1.7** "Buyer" is defined in the introductory paragraph hereof.

**1.8** "CAISO" means the California Independent System Operator Corporation or its successor.

**1.9** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

**1.10** "Confirmation" is defined in the introductory paragraph hereof.

**1.11** "Confirmation Effective Date" is defined in the introductory paragraph hereof.

**1.12** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

**1.13** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.14** "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.15** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

**1.16** "Delivery Period" is defined in Section 4.1 hereof.

**1.17** "Delivery Point" is defined in Section 4.2 hereof.

**1.18** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month with respect to which Seller has not elected to provide Alternate Capacity.

**1.19** "Effective Flexible Capacity" means the flexible capacity of a Unit that can be counted toward an LSE's Flexible RAR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA or other Governmental Body having jurisdiction.

**1.20** "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

**1.21** "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.22** "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.23** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.24** "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.25** "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability) consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA or other Governmental Body defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.26** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to

the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.27** "LRA" means Local Regulatory Authority as defined in the Tariff.

**1.28** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.29** "Master Agreement" is defined in the introductory paragraph hereof.

**1.30** "Monthly Delivery Period" means each calendar month during the Delivery Period and corresponds to each Showing Month.

**1.31** "Monthly RA Capacity Payment" is defined in Section 4.9 hereof.

**1.32** "Net Qualifying Capacity" is defined in the Tariff.

**1.33** "Notification Deadline" is defined in Section 4.5 hereof.

**1.34** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.35** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.36** "Product" is defined in Article 3 hereof.

**1.37** "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

**1.38** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if

applicable, Flexible RA Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

**1.39** "RAR" means the resource adequacy requirements (other than LAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.40** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

**1.41** "Replacement Capacity" is defined in Section 4.7 hereof.

**1.42** "Replacement Unit" is defined in Section 4.5.

**1.43** "Resource Category" is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**1.44** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**1.45** "Scheduling Coordinator" is defined in the Tariff.

**1.46** "Seller" is defined in the introductory paragraph hereof.

**1.47** "Showing Month" is the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing and/or Flexible RAR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**1.48** "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes, LAR Attributes and/or Flexible RAR Attributes of such RA Capacity to count.

**1.49** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

**1.50** "Transaction" for purposes of this Confirmation means the transaction (as that term is used in the Master Agreement) that is evidenced by this Confirmation.

**1.51** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

**1.52** "Unit EFC" means the Effective Flexible Capacity that is or will be set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

**1.53** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2. UNIT INFORMATION

| | |
|---|---|
| Name: | Metcalf Energy Center |
| Location: | San Jose, CA |
| CAISO Resource ID: | METEC_2_PL1X3 |
| Unit SCID: | CALJ |
| Unit NQC: | Varies by Month |
| Unit EFC: | N/A |
| Resource Type: | I_Phys_Res |
| Resource Category (1, 2, 3 or 4): | 4 |
| Flexible RAR Category (1, 2 or 3): | N/A |
| Path 26 (North or South): | North |
| Local Capacity Area (if any, as of Confirmation Effective Date): | Bay Area |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | None |
| Run Hour Restrictions: | None |

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RA Attributes and, if applicable, LAR Attributes, and (ii) if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, and the Contract Quantity shall be

either a Firm RA Product or a Contingent Firm RA Product, as marked and specified in either Section 3.2 or Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and Flexible RAR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.1 Product Attributes**

☐ RA Attributes
☐ RA Attributes with Flexible RA Attributes
☒ LAR Attributes
☐ LAR Attributes with Flexible RA Attributes
☐ Flexible RA Attributes

**3.2 ☐ Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Uncontrollable Force, including without limitation any adjustment of the RA Capacity of any Unit as set forth in Section 4.4, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

**3.3 ☒ Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity

during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 if and only if Seller has provided Buyer with timely notice in accordance with the Notification Deadline of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month due to a Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit.

## ARTICLE 4. DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be: March 1, 2019, through December 31, 2019, inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month | Contract Quantity (MWs) |
|---|---|
| January | 0 |
| February | 0 |
| March | 125 |
| April | 125 |
| May | 125 |
| June | 125 |
| July | 125 |
| August | 125 |
| September | 125 |
| October | 125 |
| November | 125 |
| December | 125 |

**4.4 Adjustments to Contract Quantity**

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (ii) provide Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced pursuant to this Section 4.4, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC: If the Product is Designated RA Capacity consisting of RA Attributes (and, if applicable, LAR Attributes) but does not include Flexible RA Attributes, and is also Contingent Firm RA Product, Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit NQC was reduced since the Confirmation Effective Date, divided by (iii) the Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.

(d) Reductions in Unit EFC: If the Product is Designated RA Capacity that includes Flexible RA Attributes, and is also Contingent Firm RA Product, Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit EFC was reduced since the Confirmation Effective Date, divided by (iii) the Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.

**4.5 Alternate Capacity and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or Flexible RAR Showings for such Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and identify such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if Seller notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month due to a Planned Outage of the Units and/or reduction in the Unit NQC or Unit EFC of the Units.

**4.6 Delivery of Product**

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

### 4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity for any portion of the Delivery Period;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACIY PRICE TABLE IS CONFIDENTIAL INFORMATION PURSUANT TO ARTICLE 8 BELOW**

**RA CAPACITY PRICE TABLE**

| Contract Month | Capacity Price ($/kW-month) |
|---|---|
| January | N/A |
| February | N/A |
| March | $4.00 |
| April | $4.00 |
| May | $4.00 |
| June | $4.00 |
| July | $4.00 |
| August | $4.00 |
| September | $4.00 |
| October | $4.00 |
| November | $4.00 |
| December | $4.00 |

### 4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the Master Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Uncontrollable Force that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to

perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6. GENERAL REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Buyer and Seller represents and warrants to the other party that, as of the Effective Date:

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

(b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

(c) the execution, delivery and performance of this Confirmation are within its powers, and have been duly authorized by all necessary action;

(d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to 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;

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

(f) with respect to the Master Agreement and this Confirmation, the obligations to make payments hereunder do not constitute or create any kind of lien on, or security interest in, any property or revenues of Buyer.

## ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

### 7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date.

### 7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

**ARTICLE 8. CONFIDENTIALITY**

In addition to the rights and obligations in Section 30 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

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

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits; provided such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for an breach of the terms of this Agreement by such accountant. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential

Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its Affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement; provided such Party shall cause all such Affiliates, attorneys, accountants, representatives, agents and employees who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for any breach of the terms of this Agreement by any such Affiliate and any of their attorneys, accountants, representatives, agents and employees.

## ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

## ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### 12.2. Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### 12.3. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

### 12.4. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

## ARTICLE 13. MASTER AGREEMENT AMENDMENTS

For purposes of this Transaction only, the Master Agreement shall be amended as follows:

(a) Section 22.1 of the Master Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party 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 quantities of capacity and/or energy due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within ten (10) Business Days after written notice;

(g) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;

(h) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(i) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

(b) Section 22.2(b) of the Master Agreement is amended by inserting in Section 22.2, "and is continuing" after "Event of Default occurs" in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the Master Agreement is amended by:

1) In Section 22.3(b), replacing the second sentence thereof with "The "Present Value Rate" shall be determined by the Non-Defaulting Party in a commercially reasonable manner.";

2) In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section in this Confirmation or Agreement to the contrary."

3) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[intentionally omitted]";

4) In Section 22.3(f), delete the entire provision and replace with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

(d) The netting provisions of Section 28, NETTING, of the Master Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the Master Agreement. Both Parties intend for the netting provisions of Exhibit A to the Master Agreement to be effective on the Confirmation Effective Date.

(e) Section 30.1 of the Master Agreement is amended by inserting "or requested" after the word "required" in Section 30.1(4) and by adding the following at the end of the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".

(f) Subsection and 34.2 of the Master Agreement is hereby deleted and replaced with the following:

"34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."

(g) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

(h) The following shall be inserted as a new Section 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER'S RIGHT TO RECOVER FROM SELLER, OR SELLER'S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

"34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND LIABILITY FOR THE

BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE."

(i) Section 37 of the Master Agreement is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation,".

(j) Section 41 "Witness" of the Master Agreement shall become Section 42 and the following "Standard of Review" Section substituted in its place:

"The Parties agree as follows:

For purposes of this Section, the term "Transaction" means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. From the date of entering into a Transaction under this Master Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a 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) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)( the "Mobile-Sierra" doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. __ , 171 L.Ed.2d 607 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. __ (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in

any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| **CALPINE ENERGY SERVICES, L.P.** | **CITY OF SAN JOSÉ** |
|---|---|
| By: _____ | By: _____ |
| Name: Andrew Novotny | Name: Lori Mitchell |
| Title: Vice President | Title: Director |

CONFIDENTIAL

EXHIBIT: SJCE #30
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/19- 10.26.18 Calpine RA Local Jan-Feb 2019 FullExec 18-113-06 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 19- 10.26.18 CALPINE RA LOCAL JAN-FEB 2019 FULLEXEC 18-113-06 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL



**TRANSACTION CONFIRMATION**
**RESOURCE ADEQUACY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Calpine Energy Services, L.P.** ("Seller") and **the City of San José** ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 26, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the Western Systems Power Pool Agreement (Effective Version: June 21, 2018), along with any schedules and amendments thereto (including by this Confirmation) (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern with respect to the Transaction. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1. DEFINITIONS**

**1.1** "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more of intermediaries, controls, or is controlled by, or is under common control with that Party. 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" is defined in the introductory paragraph hereof.

**1.3** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

**1.4** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

**1.5** "Availability Incentive Payments" is defined in the Tariff.

**1.6** "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

**1.7** "Buyer" is defined in the introductory paragraph hereof.

**1.8** "CAISO" means the California Independent System Operator Corporation or its successor.

**1.9** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

**1.10** "Confirmation" is defined in the introductory paragraph hereof.

**1.11** "Confirmation Effective Date" is defined in the introductory paragraph hereof.

**1.12** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

**1.13** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.14** "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.15** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

**1.16** "Delivery Period" is defined in Section 4.1 hereof.

**1.17** "Delivery Point" is defined in Section 4.2 hereof.

**1.18** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month with respect to which Seller has not elected to provide Alternate Capacity.

**1.19** "Effective Flexible Capacity" means the flexible capacity of a Unit that can be counted toward an LSE's Flexible RAR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA or other Governmental Body having jurisdiction.

**1.20** "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

**1.21** "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.22** "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.23** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.24** "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

**1.25** "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability) consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA or other Governmental Body defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.26** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to

the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

**1.27** "LRA" means Local Regulatory Authority as defined in the Tariff.

**1.28** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.29** "Master Agreement" is defined in the introductory paragraph hereof.

**1.30** "Monthly Delivery Period" means each calendar month during the Delivery Period and corresponds to each Showing Month.

**1.31** "Monthly RA Capacity Payment" is defined in Section 4.9 hereof.

**1.32** "Net Qualifying Capacity" is defined in the Tariff.

**1.33** "Notification Deadline" is defined in Section 4.5 hereof.

**1.34** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.35** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.36** "Product" is defined in Article 3 hereof.

**1.37** "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

**1.38** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if

applicable, Flexible RA Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

**1.39** "RAR" means the resource adequacy requirements (other than LAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

**1.40** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

**1.41** "Replacement Capacity" is defined in Section 4.7 hereof.

**1.42** "Replacement Unit" is defined in Section 4.5.

**1.43** "Resource Category" is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**1.44** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**1.45** "Scheduling Coordinator" is defined in the Tariff.

**1.46** "Seller" is defined in the introductory paragraph hereof.

**1.47** "Showing Month" is the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing and/or Flexible RAR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**1.48** "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes, LAR Attributes and/or Flexible RAR Attributes of such RA Capacity to count.

**1.49** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

**1.50** "Transaction" for purposes of this Confirmation means the transaction (as that term is used in the Master Agreement) that is evidenced by this Confirmation.

**1.51** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

**1.52** "Unit EFC" means the Effective Flexible Capacity that is or will be set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

**1.53** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2. UNIT INFORMATION

| | |
|---|---|
| Name: | Delta Energy Center Aggregate |
| Location: | Pittsburg, CA |
| CAISO Resource ID: | DELTA_2_PL1X4 |
| Unit SCID: | CALJ |
| Unit NQC: | Varies by Month |
| Unit EFC: | Varies by Month |
| Resource Type: | I_Phys_Res |
| Resource Category (1, 2, 3 or 4): | 4 |
| Flexible RAR Category (1, 2 or 3): | N/A |
| Path 26 (North or South): | North |
| Local Capacity Area (if any, as of Confirmation Effective Date): | Greater Bay Area |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | None |
| Run Hour Restrictions: | None |

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RA Attributes and, if applicable, LAR Attributes, and (ii) if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, and the Contract Quantity shall be

either a Firm RA Product or a Contingent Firm RA Product, as marked and specified in either Section 3.2 or Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and Flexible RAR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.1 Product Attributes**

☐ RA Attributes
☐ RA Attributes with Flexible RA Attributes
☒ LAR Attributes
☐ LAR Attributes with Flexible RA Attributes
☐ Flexible RA Attributes

**3.2 ☐ Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Uncontrollable Force, including without limitation any adjustment of the RA Capacity of any Unit as set forth in Section 4.4, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

**3.3 ☒ Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity

during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 if and only if Seller has provided Buyer with timely notice in accordance with the Notification Deadline of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month due to a Planned Outage of the Unit and/or reduction in the Unit NQC or Unit EFC of the Unit.

## ARTICLE 4. DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be: January 1, 2019, through February 28, 2019, inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month | Contract Quantity (MWs) |
|---|---|
| January | 177 |
| February | 100 |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (ii) provide Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced pursuant to this Section 4.4, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC: If the Product is Designated RA Capacity consisting of RA Attributes (and, if applicable, LAR Attributes) but does not include Flexible RA Attributes, and is also Contingent Firm RA Product, Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit NQC was reduced since the Confirmation Effective Date, divided by (iii) the Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.

(d) Reductions in Unit EFC: If the Product is Designated RA Capacity that includes Flexible RA Attributes, and is also Contingent Firm RA Product, Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit EFC was reduced since the Confirmation Effective Date, divided by (iii) the Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller shall have the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from the same Unit (provided the Unit has sufficient remaining and available Product) and/or Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity.

**4.5 Alternate Capacity and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or Flexible RAR Showings for such Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and identify such Replacement

Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if Seller notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month due to a Planned Outage of the Units and/or reduction in the Unit NQC or Unit EFC of the Units.

**4.6 Delivery of Product**

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

**4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such

portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.

**4.8 Indemnities for Failure to Deliver Contract Quantity**

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity for any portion of the Delivery Period;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

**4.9 Monthly RA Capacity Payment**

In accordance with the terms of Section 9 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACIY PRICE TABLE IS CONFIDENTIAL INFORMATION PURSUANT TO ARTICLE 8 BELOW**
**RA CAPACITY PRICE TABLE**

| Contract Month | Capacity Price ($/kW-month) |
|---|---|
| January | 3.00 |
| February | 3.00 |

**4.10 Allocation of Other Payments and Costs**

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the Master Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for

any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Uncontrollable Force that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6. GENERAL REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Buyer and Seller represents and warrants to the other party that, as of the Effective Date:

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

(b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

(c) the execution, delivery and performance of this Confirmation are within its powers, and have been duly authorized by all necessary action;

(d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to 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;

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

(f) with respect to the Master Agreement and this Confirmation, the obligations to make payments hereunder do not constitute or create any kind of lien on, or security interest in, any property or revenues of Buyer.

## ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

### 7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date.

### 7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

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

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits; provided such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall cause all accountants who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for an breach of the terms of this Agreement by such accountant. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser may be obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its Affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement; provided such Party shall cause all such Affiliates, attorneys, accountants, representatives, agents and employees who receive Confidential Information to observe the terms of this Agreement and such Party shall be responsible for any breach of the terms of this Agreement by any such Affiliate and any of their attorneys, accountants, representatives, agents and employees.

## ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

## ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### 12.2. Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### 12.3. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

### 12.4. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated

purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ARTICLE 13. MASTER AGREEMENT AMENDMENTS**

For purposes of this Transaction only, the Master Agreement shall be amended as follows:

(a) Section 22.1 of the Master Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party 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 quantities of capacity and/or energy due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within ten (10) Business Days after written notice;

(g) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;

(h) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(i) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

(b) Section 22.2(b) of the Master Agreement is amended by inserting in Section 22.2, "and is continuing" after "Event of Default occurs" in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the Master Agreement is amended by:

1) In Section 22.3(b), replacing the second sentence thereof with "The "Present Value Rate" shall be determined by the Non-Defaulting Party in a commercially reasonable manner.";

2) In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment for all such Terminated Transactions shall

be zero, notwithstanding any provision in this Section in this Confirmation or Agreement to the contrary."

3) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[intentionally omitted]";

4) In Section 22.3(f), delete the entire provision and replace with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

(d) The netting provisions of Section 28, NETTING, of the Master Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the Master Agreement. Both Parties intend for the netting provisions of Exhibit A to the Master Agreement to be effective on the Confirmation Effective Date.

(e) Section 30.1 of the Master Agreement is amended by inserting "or requested" after the word "required" in Section 30.1(4) and by adding the following at the end of the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".

(f) Subsection and 34.2 of the Master Agreement is hereby deleted and replaced with the following:

"34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."

(g) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

(h) The following shall be inserted as a new Section 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER'S RIGHT TO RECOVER FROM SELLER, OR SELLER'S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

"34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE."

(i) Section 37 of the Master Agreement is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation,".

(j) Section 41 "Witness" of the Master Agreement shall become Section 42 and the following "Standard of Review" Section substituted in its place:

"The Parties agree as follows:

For purposes of this Section, the term "Transaction" means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. From the date of entering into a Transaction under this Master Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein,

whether proposed by a 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) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)( the "Mobile-Sierra" doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. __ , 171 L.Ed.2d 607 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. __ (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| **CALPINE ENERGY SERVICES, L.P.** | **CITY OF SAN JOSÉ** |
|---|---|
| By: _____ | By: Lori Mitchell |
| Name: Andrew Novotny | Name: Lori Mitchell |
| Title: Vice President | Title: Director |

EXHIBIT: SJCE #31
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/19- 10.26.18 MEID RA Sys Local Flex Jan-Dec 2019 FullExec 18-113-10 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 19- 10.26.18 MEID RA SYS LOCAL FLEX JAN-DEC 2019 FULLEXEC 18-113-10 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

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**TRANSACTION CONFIRMATION**
**RESOURCE ADEQUACY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Merced Irrigation District** ("Seller") and the **City of San José** ("Buyer"), each individually a "Party" and together the "Parties", dated as of 10-26-2018, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the WSPP Agreement effective as of June 21, 2018, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1. DEFINITIONS**

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" is defined in the Tariff.

1.4 "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" is defined in the introductory paragraph hereof.

1.6 "CAISO" means the California Independent System Operator Corporation or its successor.

1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.8 "Confirmation" is defined in the introductory paragraph hereof.

1.9 "Confirmation Effective Date" is defined in the introductory paragraph hereof.

1.10 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

1.11 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the "Contract Quantity (MWs)" table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.12 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.13 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

1.14 "Delivery Period" is defined in Section 4.1 hereof.

1.15 "Delivery Point" is defined in Section 4.2 hereof.

1.16 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.

1.17 "Excusable Event" means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.

1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes.

1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, "PG&E Other RA", "Greater Bay Area RA", or local capacity requirement in other regulatory proceedings or legislative actions.

1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.

1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and corresponds to each Showing Month.

1.29 "Monthly RA Capacity Payment" is defined in Section 4.9 hereof.

1.30 "Net Qualifying Capacity" is defined in the Tariff.

1.31 "Notification Deadline" is defined in Section 4.5 hereof.

1.32 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.33 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.34 "Product" is defined in Article 3 hereof.

1.35 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

1.36 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

1.37 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.38 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

1.39 "Replacement Capacity" is defined in Section 4.7 hereof.

1.40 "Replacement Unit" is defined in Section 4.5 hereof.

1.41 "Resource Category" is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.42 "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

1.43 "Scheduling Coordinator" is defined in the Tariff.

1.44 "Seller" is defined in the introductory paragraph hereof.

1.45 "Showing Month" is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.48 "Term", as used in Section 12.2 of this Confirmation, means the time period commencing on the Confirmation Effective Date and expiring on the date that all of Buyer's payment obligations hereunder have been satisfied.

1.49

1.50 "Transaction" for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.

1.51 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

1.52 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.53 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

1.54 "WSPP Agreement" is defined in the introductory paragraph hereof.

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## ARTICLE 2. UNIT INFORMATION

| | |
|---|---|
| Name: | EXCHEQUER |
| CAISO Resource ID: | EXCHEC_7_UNIT 1 |
| Unit SCID: | MEID |
| Unit NQC: | 90.72 |
| Unit EFC: | 90.72 |
| Resource Type: | Hydroelectric |
| Resource Category (1, 2, 3 or 4): | 4 |
| Flexible RAR Category (1, 2 or 3): | 1 |
| Path 26 (North or South): | North |
| Local Capacity Area (if any, as of Confirmation Effective Date): | Fresno |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | None |
| Run Hour Restrictions: | None |

| | |
|---|---|
| Name: | MCSWAIN |
| CAISO Resource ID: | MCSWAN_6_UNITS |
| Unit SCID: | MEID |
| Unit NQC: | 9.6 |
| Unit EFC: | 9.6 |
| Resource Type: | Hydroelectric |
| Resource Category (1, 2, 3 or 4): | 4 |
| Flexible RAR Category (1, 2 or 3): | 2 |
| Path 26 (North or South): | North |
| Local Capacity Area (if any, as of Confirmation Effective Date): | Fresno |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | None |
| Run Hour Restrictions: | None |

| | |
|---|---|
| Name: | Merced Falls |
| CAISO Resource ID: | MERCFL_6_UNIT |
| Unit SCID: | MEID |
| Unit NQC: | 3.36 |
| Unit EFC: | 3.36 |
| Resource Type: | Hydroelectric |
| Resource Category (1, 2, 3 or 4): | 4 |
| Flexible RAR Category (1, 2 or 3): | 1 |
| Path 26 (North or South): | North |
| Local Capacity Area (if any, as of Confirmation Effective Date): | Fresno |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: | None |
| Run Hour Restrictions: | None |

**ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the "Product"), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 **Product Attributes**

☒ RA Attributes
☐ RA Attributes with Flexible RA Attributes
☒ LAR Attributes
☒ LAR Attributes with Flexible RA Attributes
☐ Flexible RA Attributes

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**3.2 ☐ Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

**3.3 ☒ Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as the result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

## ARTICLE 4. DELIVERY AND PAYMENT

**4.1 Delivery Period**

The Delivery Period shall be: January 1, 2019, through December 31, 2019.

**4.2 Delivery Point**

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

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### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

| Contract Month | RAR Contract Quantity (MWs) | Local RAR Contract Quantity (MWs) | Flexible RAR Contract Quantity (MWs) |
|---|---|---|---|
| January | 5.0 | 14.0 | 0.0 |
| February | 5.0 | 14.0 | 0.0 |
| March | 0.0 | 90.72 | 0.0 |
| April | 0.0 | 102.72 | 70.0 |
| May | 0.0 | 102.72 | 70.0 |
| June | 0.0 | 102.72 | 70.0 |
| July | 0.0 | 102.72 | 70.0 |
| August | 0.0 | 102.72 | 70.0 |
| September | 0.0 | 102.72 | 70.0 |
| October | 0.0 | 102.72 | 70.0 |
| November | 0.0 | 90.72 | 0.0 |
| December | 0.0 | 90.72 | 0.0 |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written

notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

**4.5 Notification Deadline and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party in accordance with Section 4.7.

**4.6 Delivery of Product**

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written

confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

**4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.

(c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

**4.8 Indemnities for Failure to Deliver Contract Quantity**

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

| Contract Month | RAR Capacity Price ($/kW-month) | Local RAR Capacity Price ($/kW-month) |
|---|---|---|
| January | $2.00 | $2.20 |
| February | $2.00 | $2.20 |
| March | $0.00 | $2.20 |
| April | $0.00 | $3.57 |

| Contract Month | RAR Capacity Price ($/kW-month) | Local RAR Capacity Price ($/kW-month) |
|---|---|---|
| May | $0.00 | $3.57 |
| June | $0.00 | $5.92 |
| July | $0.00 | $5.92 |
| August | $0.00 | $5.92 |
| September | $0.00 | $5.92 |
| October | $0.00 | $3.57 |
| November | $0.00 | $2.20 |
| December | $0.00 | $2.20 |

**4.10 Allocation of Other Payments and Costs**

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing

to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity purchased by Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6. [RESERVED]

## ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

### 7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

**7.2 Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

## ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product purchased by Buyer hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

## ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control

of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

(k)

### 12.2. Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund that are one hundred and ten percent (110%) of the total amount necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy and/or capacity for San José Clean Energy. Seller shall have the right to audit account balance information with respect to the San José Clean Energy designated fund during the Term. If the balance in the designated fund falls below one hundred and ten percent (110%) of the total amount necessary for Buyer to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy and/or capacity for San José Clean Energy, Buyer shall be required to post a Letter of Credit or other acceptable collateral or security, in an amount based on a reasonable estimate of the damages to Seller if Buyer were to fail to perform its obligations under this Agreement.

(b) Limited Obligations. Except as provided in Section 12.2(a) above, Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San

José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

**12.3. Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**12.4. Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| **MERCED IRRIGATION DISTRICT** | **CITY OF SAN JOSÉ** |
|---|---|
| By: | By: |
| Name: JUAN C. SANDOVAL | Name: Lori Mitchell |
| Title: INTERIM D6M | Title: Director |

EXHIBIT: SJCE #32
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 9-21-2018-RE 2019 RA - let's get this going again! -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 9-21-2018-RE 2019 RA - LET'S GET THIS GOING AGAIN! - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

| | |
|---|---|
| Subject | **RE: 2019 RA - let's get this going again!** |
| From | Sole, Jeanne |
| To | Kowalewski, Michael |
| Cc | Tony Zimmer; Morris, Kelly; Sanchez, Sarah; Hall, Stephen C.; Chang, Kimberly; McHugh, John; Gong, Alice; RA_Solicitations; Arjo, Avery; Wojda, Stephanie; Moran, Ed; Morris, Kelly; Tony Zimmer |
| Sent | Friday, September 21, 2018 9:45 AM |

Michael, one other thing, the total amounts that I understand are on the table with PG&E for 2019 RA are as follows for a total of $16,434,890.

| | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PG&E Offer System | | 0.00 | | 0.00 | | 79.00 | | 253.00 | | 380.00 | | 502.00 | | 0.00 | | 571.00 | | 0.00 | | 0.00 | | 284.00 | | 337.00 | | **2406.00** |
| | $ | - | $ | - | $ | 2.68 | $ | 2.68 | $ | 3.50 | $ | 5.75 | $ | - | $ | 6.65 | $ | - | $ | - | $ | 2.68 | $ | 2.68 | $ | **4.39** |
| | $ | - | $ | - | $ | 211,720 | $ | 678,040 | $ | 1,330,000 | $ | 2,886,500 | $ | - | $ | 3,797,150 | $ | - | $ | - | $ | 761,120 | $ | 903,160 | $ | **10,567,690** |
| PG&E Offer GBA | | 0.00 | | 0.00 | | 40.00 | | 40.00 | | 40.00 | | 40.00 | | 0.00 | | 40.00 | | 0.00 | | 0.00 | | 40.00 | | 40.00 | | **280.00** |
| | $ | - | $ | - | $ | 3.50 | $ | 3.50 | $ | 3.50 | $ | 5.75 | $ | - | $ | 6.65 | $ | - | $ | - | $ | 3.80 | $ | 3.80 | $ | **4.36** |
| | $ | - | $ | - | $ | 140,000 | $ | 140,000 | $ | 140,000 | $ | 230,000 | $ | - | $ | 266,000 | $ | - | $ | - | $ | 152,000 | $ | 152,000 | $ | **1,220,000** |
| PG&E Offer (PG&E Other) | | 0.00 | | 0.00 | | 160.00 | | 148.00 | | 148.00 | | 148.00 | | 0.00 | | 148.00 | | 0.00 | | 0.00 | | 160.00 | | 160.00 | | **1072.00** |
| | $ | - | $ | - | $ | 3.50 | $ | 3.50 | $ | 3.50 | $ | 5.75 | $ | - | $ | 6.65 | $ | - | $ | - | $ | 3.80 | $ | 3.80 | $ | **4.34** |
| | $ | - | $ | - | $ | 560,000 | $ | 518,000 | $ | 518,000 | $ | 851,000 | $ | - | $ | 984,200 | $ | - | $ | - | $ | 608,000 | $ | 608,000 | $ | **4,647,200** |
| PG&E Flex | | 0.00 | | 0.00 | | 193.00 | | 145.00 | | 169.00 | | 115.00 | | 0.00 | | 130.00 | | 0.00 | | 0.00 | | 284.00 | | 315.00 | | |

Jeanne M. Solé
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

**From:** Sole, Jeanne
**Sent:** Thursday, September 20, 2018 5:09 PM
**To:** 'Kowalewski, Michael' <MSK4@pge.com>
**Cc:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly <KWCC@pge.com>; McHug <JT2F@pge.com>; Gong, Alice <AxL3@pge.com>; RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Moran, Ed <Ed.Moran@sanjoseca.gov>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: 2019 RA - let's get this going again!

Michael, Let's start with the credit support. I can talk tomorrow between 11-12:30 or after 4, or Monday between 12-1:30 or after 3. I will check in with my attorney about his schedule and get back to you about that.

Thanks.

Jeanne M. Solé
Deputy Director of Power Resources
200 E. Santa Clara St., 14 Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

**From:** Kowalewski, Michael [mailto:MSK4@pge.com]

**Sent:** Thursday, September 20, 2018 12:04 PM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly <KWCC@pge.com>; McHugh, John <JT2F@pge.com>; Gong, Alice <AxL3@pge.com>; RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Moran, Ed <Ed.Moran@sanjoseca.gov>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: 2019 RA - let's get this going again!

Hi Jeanne

Please contact me with some times SJCE would be available to discuss the two items below. I suggest separate conversations, as I'd like to have our credit team represented for the discussion of accruals, and our legal team for the NY law question.

Thank you.

**Michael Kowalewski**
Portfolio Management | Pacific Gas and Electric Company
michael.kowalewski@pge.com | ICE Chat: mkowalewski2 | 415.972.5589

**From:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Sent:** Thursday, September 20, 2018 11:20 AM
**To:** Kowalewski, Michael <MSK4@pge.com>
**Cc:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly <KWCC@pge.com>; McHugh, John <JT2F@pge.com>; Gong, Alice <AxL3@pge.com>; RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Moran, Ed <Ed.Moran@sanjoseca.gov>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** 2019 RA - let's get this going again!

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Hi Michael,

I would like to get moving again on the 2019 RA.

I looked again at the credit support spreadsheet by PG&E (attached). Given that you can live with 60 days prepayment, I don't see why we would ever have to post collateral for more than the maximum for two consecutive months the highest amount of which is $4.2M and most of the time it would be a lot less. It does not really work for us to be changing the amount repeatedly so let me look at it and get back to you on a schedule that we could live with, with the idea that you would never be less protected than if we paid two months ahead.

I believe that the only other outstanding issues were confidentiality (you were going to identify upfront the types of items that are confidential) and the use of NY law. On the first, the ball is in your court. On the second, let's set up a call with our respective counsels.

Thanks again for expediting this!

Jeanne

Jeanne M. Solé
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

**From:** Kowalewski, Michael [mailto:MSK4@pge.com]
**Sent:** Thursday, September 13, 2018 3:29 PM
**To:** Cisneros, Keila <Keila.Cisneros@sanjoseca.gov>
**Cc:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly

<KWCC@pge.com>; **McHugh, John** <JT2F@pge.com>; **Gong, Alice** <AxL3@pge.com>; **RA_Solicitations** <RASolicitations@pge.com>; **Arjo, Avery** <A4AQ@pge.com>; **Wojda, Stephanie** <S2WX@pge.com>; **Moran, Ed** <Ed.Moran@sanjoseca.gov>
**Subject:** RE: Executed Documents

Keila, Jeanne and SJCE Team

I received the three documents via email. Thank you for your efforts getting the agreements and this transaction in place. I should have a counter-signed document for you tomorrow.

Best

**Michael Kowalewski**
Portfolio Management | Pacific Gas and Electric Company
michael.kowalewski@pge.com | ICE Chat: mkowalewski2 | 415.972.5589

**From:** Cisneros, Keila <Keila.Cisneros@sanjoseca.gov>
**Sent:** Thursday, September 13, 2018 2:55 PM
**To:** Kowalewski, Michael <MSK4@pge.com>
**Cc:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly <KWCC@pge.com>; McHugh, John <JT2F@pge.com>; Gong, Alice <AxL3@pge.com>; RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Moran, Ed <Ed.Moran@sanjoseca.gov>
**Subject:** RE: Executed Documents

*****CAUTION: This email was sent from an EXTERNAL source. Think before clicking links or opening attachments.*****
Email 3

Thank you,

*Keila Cisneros*
Staff Specialist | Office of the Director
Community Energy Department | 14th floor
200 E. Santa Clara Street | San José, CA 95113
T: 408.535.4864 | E: keila.cisneros@sanjoseca.gov

**From:** Cisneros, Keila
**Sent:** Thursday, September 13, 2018 1:04 PM
**To:** MSK4@pge.com
**Cc:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; KWCC@pge.com; JT2F@pge.com; AxL3@pge.com; RASolicitations@pge.com; A4AQ@pge.com; S2WX@pge.com; Moran, Ed <Ed.Moran@sanjoseca.gov>
**Subject:** FW: Executed Documents
**Importance:** High

Hi Michael,

Sending again because it didn't seem to go through last time. See below for reference.

Thank you,

*Keila Cisneros*
Staff Specialist | Office of the Director
Community Energy Department | 14th floor
200 E. Santa Clara Street | San José, CA 95113
T: 408.535.4864 | E: keila.cisneros@sanjoseca.gov

**From:** Cisneros, Keila
**Sent:** Thursday, September 13, 2018 12:50 PM
**To:** MSK4@pge.com
**Cc:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutmansanders.com>; Chang, Kimberly <KWCC@pge.com>; McHugh, John <JT2F@pge.com>; Gong, Alice <AxL3@pge.com>; RA_Solicitations <RASolicitations@pge.com>; Arjo, Avery <A4AQ@pge.com>; Wojda, Stephanie <S2WX@pge.com>; Moran, Ed <Ed.Moran@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Sanchez, Sarah <sarah.sanchez@sanjoseca.gov>
**Subject:** Executed Documents

Hi Michael,

Please find the signed copies of the RA Letter, Paragraph 10 to the Collateral Annex and EEI Cover Sheet. Please let me know if you have any questions.

Thank you,

*Keila Cisneros*
Staff Specialist | Office of the Director
Community Energy Department | 14th floor
200 E. Santa Clara Street | San José, CA 95113
T: 408.535.4864 | E: keila.cisneros@sanjoseca.gov

EXHIBIT: SJCE #33
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 8-6-RE SJCE Calpine CY 2019 RA Transaction -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 8-6-RE SJCE CALPINE CY 2019 RA TRANSACTION - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Ashley Lewis Bernstein <Ashley.Bernstein@calpine.com>
**Sent:** Monday, August 6, 2018 8:43 PM
**To:** Tony Zimmer
**Cc:** Sole, Jeanne; Jason Armenta
**Subject:** RE: SJCE / Calpine CY 2019 RA Transaction

Thanks Tony. I will give you a call tomorrow to discuss next steps. I believe we can accommodate the 125 MW volume, but will confirm before I give you a call.

Thanks,
Ashley

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, August 06, 2018 1:39 PM
**To:** Ashley Lewis Bernstein
**Cc:** Sole, Jeanne; Jason Armenta; Tony Zimmer
**Subject:** SJCE / Calpine CY 2019 RA Transaction

Hi Ashley,

Following up from a conversation I had with SJCE this morning regarding CY 2019 RA procurement, I want to check in with you to see if Calpine would be open to moving forward with one of the two options described below:

- Option 1
  - Quantity: 125 MW
  - Price: $4.00 / kW-month
  - Term: March 2019 – December 2019
- Option 2
  - Quantity: 100 MW
  - Price: $4.00 / kW-month
  - Term: March 2019 – December 2019

I am happy to discuss further if that would be helpful. Pending which option would work best for Calpine, we can discuss next steps.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone

www.ncpa.com

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EXHIBIT: SJCE #34
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ Re SJCE Offer - PCE PGE Other Solicitation - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# RE SJCE OFFER - PCE PGE OTHER SOLICITATION - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Chelsea Keys <ckeys@peninsulacleanenergy.com>
**Sent:** Monday, October 29, 2018 11:27 AM
**To:** Tony Zimmer
**Cc:** PCE Procurement; Sole, Jeanne; Morris, Kelly
**Subject:** Re: SJCE Offer - PCE PG&E Other Solicitation
**Attachments:** image001.jpg

Hello Tony and Jeanne,

Thank you for participating in PCE's last-minute solicitation. We reviewed your offer and I'd like to provide you with a counteroffer for your consideration. I know SJCE doesn't have much of a need in January but if you can accommodate taking a bit more in January we can supply you with the following volumes for February, July and October. Please give me a call to discuss further. I can have a confirm similar to our pending agreement to you shortly.

| JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEPT | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 25 | 14.95 | | | | | 11 | | | 6 | | |
| $ 5.50 | $ 5.50 | | | | | $ 6.30 | | | $ 5.50 | | |

Thank you,

Chelsea Keys
Power Resources Manager
Peninsula Clean Energy
ckeys@peninsulacleanenergy.com
(650) 382-2002

Visit us at:
www.peninsulacleanenergy.com

On Fri, Oct 26, 2018 at 4:15 PM Tony Zimmer <Tony.Zimmer@ncpa.com> wrote:

> Hi Chelsea,

Please see SJCE's offer to purchase PG&E Other Local RA in response to Peninsula Clean Energy's RA solicitation dated 10/26/2018:

- SJCE to Purchase the following:
    - Product: PG&E Other Local RA
        - Jan-19: 4.6 MW @ $3.50 / kW-month
        - Feb-19: 30.0 MW @ $3.50 / kW-month
        - Jul-19: 30.0 MW @ $6.30 / kW-month
        - Oct-19: 30 MW @ $ 3.85 / kW-month

Please feel free to contact Jeanne or I if you have any questions.

Thank you for consideration of SJCE's offer.

Tony Zimmer

Assistant General Manager, Power Management

**Northern California Power Agency**

*A Public Agency*

651 Commerce Drive

Roseville, CA 95678-6420

(916) 781-4229 Phone

www.ncpa.com

EXHIBIT: SJCE #35
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 9-14-2018-RE SJCE Request for Offers - 2019 -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-14-2018-RE SJCE REQUEST FOR OFFERS - 2019 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Peter Virasak <PVirasak@SantaClaraCA.gov>
**Sent:** Friday, September 14, 2018 11:47 AM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** Moises Melgoza; Saul Lopez
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** SVP Response - SJCE RFO 2019 Resource Adequacy Products 09072018 - Offer Form.xlsx

Hi Tony and Jeanne,

Please see attached for SVP's offer to sell Local PG&E Other and Bay Area RA for July 2019 and October 2019 respectively.

Also due to the timing of the RFO, SVP would prefer that the deal be sleeved through NCPA if SVP is selected in the process. This would help expedite the transaction as SVP and NCPA are approved parties. Our City Attorney's office is currently requesting a 4-6 week turnaround time for contractual reviews due to their current backlog.

Feel free to let me know if you have any questions.

Thanks,

Peter

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, September 07, 2018 5:42 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: September 7, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| Jul-19 | 537.0 | 40.0 | 148.0 | 101.0 |
| Sept-19 | 646.0 | 40.0 | 148.0 | 202.0 |
| Oct-19 | 359.0 | 40.0 | 148.0 | 164.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to September 14, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to

SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**Resource Adequacy Request for Offers: Contact Information**

| | |
|---|---|
| **Company Name:** | City of Santa Clara, dba. Silicon Valley Power |
| **Company Address:** | 881 Martin Ave. |
| **City, State, Zip** | Santa Clara, CA 95110 |
| **Authorized Contact:** | Peter Virasak |
| **Title of Contact:** | Principal Power Analyst |
| **Phone Number:** | (408) 615-6645 |
| **Fax Number:** | |
| **Email Address:** | pvirasak@svpower.com |

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

| | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | | | |
| Quantity Requested (MW): | 537 | 646 | 359 |
| Offer Quantity (MW): | | | |
| Offer Price ($/kW-Month): | | | |
| Flexible RA (Yes or No): | | | |
| Flexible RA Category (if applicable): | | | |
| North or South of Path 26: | | | |
| Resource Category (1, 2, 3, 4): | | | |
| Requires Import Capability Allocation (Yes or No): | | | |
| Import Branch Group (if applicable): | | | |

**Local Resource Adequacy - Greater Bay Area**

| | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | SVP | | SVP |
| Quantity Requested (MW): | 40 | 40 | 40 |
| Offer Quantity (MW): | 40 | | 40 |
| Offer Price ($/kW-Month): | 6.75 | | 4.25 |
| Flexible RA (Yes or No): | No | | No |
| Flexible RA Category (if applicable): | | | |
| Resource Category (1, 2, 3, 4): | | | |

**Local Resource Adequacy - Other PG&E Areas**

| | Jul-19 | Sep-19 | Oct-19 |
|---|---|---|---|
| Seller: | | | |
| Quantity Requested (MW): | 148 | 148 | 148 |
| Offer Quantity (MW): | 77 | | 10 |
| Offer Price ($/kW-Month): | 6.5 | | 4 |
| Flexible RA (Yes or No): | No | | No |

| | | | |
|---|---|---|---|
| **Flexible RA Category (if applicable):** | | | |
| **Resource Category (1, 2, 3, 4):** | | | |

EXHIBIT: SJCE #36
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/9-15-2018-SVP RE SJCE Request for Offers - 2019 Resource Adequacy Products - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-15-2018-SVP RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Saturday, September 15, 2018 6:18 PM
**To:** Peter Virasak; Sole, Jeanne
**Cc:** Moises Melgoza; Saul Lopez; Tony Zimmer
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Peter,

Thank you for submitting SVP's offer in response to SJCE's RFO. NCPA is not authorized to transact on behalf of SJCE for any transactions that has a term that is longer than balance-of-month. If SVP is willing to transact with SJCE, SJCE is happy to provide what information may be required to enable SJCE with SVP. Pending you response, SJCE is interested in discussing next steps regarding working toward confirming the following volumes with SVP:

- July-19 (Local RA)
  - PG&E GBA
    - 40 MW @ $6.75 / kW-month
  - PG&E Other
    - 77 MW @ $6.65 / kW-month
- Oct-19 (Local RA)
  - PG&E GBA
    - 40 MW @ $4.25 / kW-month
  - PG&E Other
    - 10 MW @ $4.00 / kW-month

Pending your review and feedback, we can discuss next steps.

Please feel free to contact me if you have any questions.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

---

**From:** Peter Virasak
**Sent:** Friday, September 14, 2018 11:47 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Moises Melgoza <MMelgoza@SantaClaraCA.gov>; Saul Lopez <SLopez@SantaClaraCA.gov>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Tony and Jeanne,

Please see attached for SVP's offer to sell Local PG&E Other and Bay Area RA for July 2019 and October 2019 respectively.

Also due to the timing of the RFO, SVP would prefer that the deal be sleeved through NCPA if SVP is selected in the process. This would help expedite the transaction as SVP and NCPA are approved parties. Our City Attorney's office is currently requesting a 4-6 week turnaround time for contractual reviews due to their current backlog.

Feel free to let me know if you have any questions.

Thanks,

Peter

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Friday, September 07, 2018 5:42 PM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: September 7, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jul-19 | 537.0 | 40.0 | 148.0 | 101.0 |
| Sept-19 | 646.0 | 40.0 | 148.0 | 202.0 |
| Oct-19 | 359.0 | 40.0 | 148.0 | 164.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to September 14, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov

- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

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SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
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EXHIBIT: SJCE #37
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/9-6-18-SFPUC-Request for Bids - San Francisco Public Utilities Commission (SFPUC) - -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-6-18-SFPUC-REQUEST FOR BIDS - SAN FRANCISCO PUBLIC UTILITIES COMMISSION (SFPUC) - - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Thursday, September 6, 2018 3:51 PM
**Subject:** Request for Bids - San Francisco Public Utilities Commission (SFPUC) - CleanPowerSF - 2019 Resource Adequacy Supplies
**Attachments:** CleanPowerSF RFB_2019 RA Supplies.pdf; CleanPowerSF_2019 RA_Exhibit A.xlsx

Good Afternoon,

The San Francisco Public Utilities Commission (SFPUC) - CleanPowerSF issues this Request for Bids (RFB) to sell System, Local, and Flexible Resource Adequacy capacity for January – December of 2019.

The detailed offer and response procedure are provided in the attached documents. **Please submit your responses by 5:00pm PDT on Friday, September 14th.**

Thanks,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

# City and County of San Francisco – CleanPowerSF
# Request for Bids
# 2019 Resource Adequacy Supplies

September 6, 2018

## Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates CleanPowerSF, San Francisco's Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP).

CleanPowerSF issues this Request for Bids (RFB) to sell system, local, and flexible resource adequacy (RA) for January – December of 2019. Bids are requested in $/kW-month.

| Requirement | Specification |
|---|---|
| Capacity Product | Contingent firm |
| Capacity Attributes | CleanPowerSF is selling RA Capacity that will satisfy CPUC and CAISO requirements for Load Serving Entities for the following RA capacity attributes:<br>- **System RA Capacity:** Qualified generation resources located within NP 15<br>- **Flexible RA Capacity:** Qualified generation resources located within NP 15 and qualify for the CPUC and CAISO defined flexible attribute (preferably flexible category 1 but will consider flexible categories 2 and 3)<br>- **Local RA Capacity:** Quantified generation resources located within the PG&E "Greater Bay Area" and the "Other PG&E" Local Area and local capacity areas. |
| Minimum Volume | 1 MW, AC |
| Term | Up to 12 months with deliveries commencing no sooner than January 1, 2019. |
| Capacity Locations | Generator resources located within the CPUC and CAISO defined geographic boundaries (i.e., North of Path 26, Other PG&E Local Area, and Greater Bay Area). |
| Proposed Pricing | Bids into this solicitation shall be offered on a fixed $/kW-month basis, for each month of the proposed contract term. |

## Proposal Timing

The proposed bids must be submitted to powerpurchasing@sfwater.org by **5:00pm PPT on Friday, September 14, 2018.**

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

**Enabling Agreement Requirement**

The SFPUC purchases and sells energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation or a confirmation under an existing Master Agreement. The SFPUC requires the following amendments to the confirmation:

- Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.
- Section 24 of the WSPP Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."
- City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- Prohibition on Political Activity. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Confirmation. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City Controller in its performance of this Confirmation. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this confirmation, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The City Controller will not consider Seller's use of profit from the performance of this Confirmation as a violation of this Section.

**How to Respond**

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with CleanPowerSF.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- Please complete and submit multiple copies of Exhibit A for multiple products/periods.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.

**Responses and/or questions should be addressed to: powerpurchasing@sfwater.org**

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

**Post-Response Negotiations**

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

**Disclaimer and Confidentiality**

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

# CleanPowerSF
# Resource Adequacy 2019 Request for Bids (RA RFB)
# 9/6/2018

| Instructions |
|---|
| After reviewing the 2019 RA RFB , please complete and submit this Bid Form to powerpurchasing@sfwater.org by**5:00 pm PDT on Friday, September 14, 2018.** |
| The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP) and sells RA under the WSPP agreement. Bidding entities are required to be a WSPP member to participate in the RFB. |
| The tab, titled "Exhibit A-1 - 2019 Bids," is included to facilitate exchange of RA during January through December 2019. |
| Please add additional sections and rows to any tab as necessary to accomodate multiple product offers and tiered offer pricing. |
| Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other. |
| Please direct any questions to powerpurchasing@sfwater.org. |

| Participant Information | |
|---|---|
| Organization Name | |
| Address (Street, City, State, ZIP) | |
| Authorized Participant Name | |
| Title | |
| Email | |
| Phone | |
| Parent Company, if applicable | |
| Other | |

# Exhibit A-1: 2019 Bids to Purchase

*Please complete the table below for the Bid Volumes and Prices by Month.*
*If submitting multiple Bids, please indicate by adding columns/rows or creating a new tab in the Exhibit Workbook as necessary.*
*Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other.*

| | = Information to be completed by Bidder |
|---|---|

| Product | North of Path 26 - System Resource Adequacy | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Greater Bay Area | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Other PG&E Areas | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | | | | | | |
| Bid Price ($/kW-mo) | | | | | | | | | | | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

EXHIBIT: SJCE #38
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/9-14-2018-CleanPower SF Request for Bids - San Jose Clean Energy (SJCE) Offer -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 9-14-2018-CLEANPOWER SF REQUEST FOR BIDS - SAN JOSE CLEAN ENERGY (SJCE) OFFER - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Friday, September 14, 2018 4:15 PM
**To:** powerpurchasing@sfwater.org
**Cc:** Tony Zimmer; Sole, Jeanne; Morris, Kelly; Mulberg, Erin
**Subject:** CleanPower SF Request for Bids - San Jose Clean Energy (SJCE) Offer
**Attachments:** CleanPowerSF_2019 RA_Exhibit A (SJCE Offer).xlsx

**Importance:** High

To Whom It May Concern,

In response to the request for bids issued by CleanPower SF, dated September 6, 2018, please find attached for your consideration an offer submitted by San Jose Clean Energy (SJCE) to purchase Resource Adequacy products from CleanPower SF.

San Jose Clean Energy submits these bid responses subject to receipt of any necessary approvals from its Risk Oversight Committee, qualifying CleanPowerSF as a counterparty, and reaching agreement on mutually acceptable contract terms.

Please feel free to contact me if you have any questions regarding the attached offer, or if you need any additional information.

Thank you,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

CleanPowerSF
Same Service • Cleaner Energy

# CleanPowerSF
# Resource Adequacy 2019 Request for Bids (RA RFB)
# 9/6/2018

| Instructions |
|---|
| After reviewing the 2019 RA RFB , please complete and submit this Bid Form to powerpurchasing@sfwater.org by**5:00 pm PDT on Friday, September 14, 2018.** |
| The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF is a member of WSPP under the legacy name of Hetch Hetchy Water & Power (HHWP) and sells RA under the WSPP agreement. Bidding entities are required to be a WSPP member to participate in the RFB. |
| The tab, titled "Exhibit A-1 - 2019 Bids," is included to facilitate exchange of RA during January through December 2019. |
| Please add additional sections and rows to any tab as necessary to accomodate multiple product offers and tiered offer pricing. |
| Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other. |
| Please direct any questions to powerpurchasing@sfwater.org. |

| Participant Information | |
|---|---|
| Organization Name | San Jose Clean Energy |
| Address (Street, City, State, ZIP) | 200 E. Santa Clara Street, 14th Floor' |
| Authorized Participant Name | Jeanne M. Sole |
| Title | Deputy Director of Power Resources |
| Email | jeanne.sole@sanjoseca.gov |
| Phone | 408-535-4867 |
| Parent Company, if applicable | |
| Other | Alternative Contact: Tony Zimmer, 916-781-4229, tony.zimmer@ncpa.com |

# Exhibit A-1: 2019 Bids to Purchase

*Please complete the table below for the Bid Volumes and Prices by Month.*
*If submitting multiple Bids, please indicate by adding columns/rows or creating a new tab in the Exhibit Workbook as necessary.*
*Please indicate if offers are contingent on selection of other months and/or years. Unless noted otherwise, monthly offers will be assumed to be independent of each other.*

| | = Information to be completed by Bidder |
|---|---|

| Product | North of Path 26 - System Resource Adequacy | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | The quantity of Flexible can be distributed among the three products offered. | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 536.00 | | 645.00 | 359.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $3.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | 101.00 | | 202.00 | 164.00 | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | $0.10 | | $0.10 | $0.10 | | |

| Product | Local Resource Adequacy - Greater Bay Area | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 39.00 | | 39.00 | 39.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $4.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

| Product | Local Resource Adequacy - Other PG&E Areas | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prospective Buyer | San Jose Clean Energy | | | | | | | | | | | |
| Notes | | | | | | | | | | | | |
| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| Bid Volume (MW) | | | | | | | 147.00 | | 147.00 | 147.00 | | |
| Bid Price ($/kW-mo) | | | | | | | $6.50 | | $6.50 | $4.50 | | |
| Flexible Volume (MW), of total Volume, above, if applicable | | | | | | | | | | | | |
| Flexible Price Adder, if applicable ($/kW-mo) | | | | | | | | | | | | |

Note 1: San Jose Clean Energy submits these bid responses subject to receipt of any necessary approvals from its Risk Oversight Committee, qualifying CleanPowerSF as a counterparty, and reaching agreement on mutually acceptable terms.

EXHIBIT: SJCE #39
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-15-2018-SFPUC-RE SJCE Request for Offers - 2019 Resource Adequacy Products -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-15-2018-SFPUC-RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Monday, October 15, 2018 10:36 AM
**To:** Tony Zimmer; Sole, Jeanne
**Cc:** Mulberg, Erin; Smith, Randall; Power Purchasing
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** SJCE RFO 2019 Resource Adequacy Products 10112018 - CleanPowerSF.xlsx

Jeanne and Tony,

Please find attached CleanPowerSF's bid to sell SJCE 2019 Resource Adequacy products. Feel free to reach out with any questions.

Best,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>; Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations

- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**Resource Adequacy Request for Offers: Contact Information**

| | |
|---|---|
| **Company Name:** | CleanPowerSF |
| **Company Address:** | 525 Golden Gate Avenue, 7th Floor |
| **City, State, Zip** | San Fancisco, CA 94102 |
| **Authorized Contact:** | Erin Mulberg |
| **Title of Contact:** | Utility Specialist, Origination and Power Supply |
| **Phone Number:** | (415) 551-4598 |
| **Fax Number:** | |
| **Email Address:** | emulberg@sfwater.org |

**Offers to Sell Resource Adequacy Products to SJCE**

(add more columns/rows as necessary for multiple offers)

**System Resource Adequacy**

| | Feb-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 |
|---|---|---|---|---|---|---|---|---|
| **Seller:** | CleanPowerSF | CleanPowerSF | CleanPowerSF | | | | | |
| **Quantity Requested (MW):** | **54** | **26.6** | **35.9** | **21.2** | **427.8** | **27.6** | **588.2** | **111.9** |
| **Offer Quantity (MW):** | 54 | 26.6 | 31 | 0 | 0 | 0 | 0 | 0 |
| **Offer Price ($/kW-Month):** | $ 3.25 | $ 3.75 | $ 3.75 | 0 | 0 | 0 | 0 | 0 |
| **Flexible RA (Yes or No):** | No | Yes | Yes | N/A | N/A | N/A | N/A | N/A |
| **Flexible RA Category (if applicable):** | N/A | 4 | 4 | N/A | N/A | N/A | N/A | N/A |
| **North or South of Path 26:** | North | North | North | N/A | N/A | N/A | N/A | N/A |
| **Resource Category (1, 2, 3, 4):** | 1 | 1 | 1 | N/A | N/A | N/A | N/A | N/A |
| **Requires Import Capability Allocation (Yes or No):** | No | No | No | N/A | N/A | N/A | N/A | N/A |
| **Import Branch Group (if applicable):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

**Local Resource Adequacy - Greater Bay Area**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Aug-19 | Sep-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | | | | | | | CleanPowerSF | |
| **Quantity Requested (MW):** | **177** | **177** | **12** | **12** | **12** | **12** | **12** | **30** | **12** | **12** |
| **Offer Quantity (MW):** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 0 |
| **Offer Price ($/kW-Month):** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $ 4.00 | 0 |
| **Flexible RA (Yes or No):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | Yes | N/A |
| **Flexible RA Category (if applicable):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 4 | N/A |
| **Resource Category (1, 2, 3, 4):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 1 | N/A |

**Local Resource Adequacy - Other PG&E Areas**

| | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Seller:** | | | | | | | | | | | | |
| **Quantity Requested (MW):** | **246.9** | **246.9** | **10.1** | **10.1** | **10.1** | **10.1** | **56.2** | **10.1** | **158.2** | **148.2** | **10.1** | **10.1** |
| **Offer Quantity (MW):** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Offer Price ($/kW-Month):** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Flexible RA (Yes or No):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| **Flexible RA Category (if applicable):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| **Resource Category (1, 2, 3, 4):** | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

EXHIBIT: SJCE #40
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 10-11-2018-Re SJCE Request for Offers - 2019 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 10-11-2018-RE SJCE REQUEST FOR OFFERS - 2019 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Chelsea Keys <ckeys@peninsulacleanenergy.com>
**Sent:** Thursday, October 11, 2018 6:05 PM
**To:** Sole, Jeanne
**Cc:** Siobhan Doherty
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Good evening Jeanne,

So sorry I wasn't able to get back to you earlier as planned. We had our Wright Solar groundbreaking event today and we just got back a bit ago. Here are some volumes and prices. Like I mentioned we will have to know rather quickly if you're interested. You can find PCE's financials here on our website: https://www.peninsulacleanenergy.com/budget-and-finances/
Please let me know if you need anything else from us regarding our financials. Have a great evening.

**System**

| Jan-19 | Feb-19 |
|---|---|
| 54 | 26.6 |
| $ 1.75 | $ 1.75 |

**Local PG&E Other**

| Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 |
|---|---|---|---|---|---|---|---|---|---|
| 82.72 | 84.21 | 10.10 | | | 10.10 | | | | 28.23 |
| $ 4.30 | $ 4.30 | $ 4.30 | | | $ 6.35 | | | | $ 6.70 |

Thanks,

Chelsea Keys

Power Resources Manager

Peninsula Clean Energy

ckeys@peninsulacleanenergy.com

(650) 382-2002

Visit us at:

www.peninsulacleanenergy.com

On Thu, Oct 11, 2018 at 10:13 AM Sole, Jeanne <jeanne.sole@sanjoseca.gov> wrote:

> Chelsea, given that we have issued several solicitations already, I can give you an indication today if you let me know about quantities and prices. It would have to be subject to our finance department approving PCE as a qualified counterparty (or approval by our Risk Oversight Committee) but I see no reason why that would be a problem for a moderate sum.

**Jeanne M. Solé**

**Deputy Director of Power Resources**

200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov

SAN JOSE CLEAN ENERGY

SanJoseCleanEnergy.org

**From:** Chelsea Keys [mailto:ckeys@peninsulacleanenergy.com]
**Sent:** Thursday, October 11, 2018 10:08 AM
**To:** Siobhan Doherty <sdoherty@peninsulacleanenergy.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hello Jeanne,

I just saw your RFO this morning and it looks like we can potentially sell you some of our excess System and PG&E Other that we have available. Although we would have to make a decision on some of the volumes today because we have a couple different negotiations that need answers from us. But I thought I'd email you because we'd always rather help out another CCA. Let me know if you're in the position to make any decisions today and I can send you some volumes and prices.

Thank you,

Chelsea Keys

Power Resources Manager

Peninsula Clean Energy

ckeys@peninsulacleanenergy.com

(650) 382-2002

Visit us at:

www.peninsulacleanenergy.com

On Thu, Oct 11, 2018 at 8:57 AM Siobhan Doherty <sdoherty@peninsulacleanenergy.com> wrote:

---------- Forwarded message ---------
From: **Tony Zimmer** <Tony.Zimmer@ncpa.com>
Date: Thu, Oct 11, 2018 at 6:37 AM
Subject: SJCE Request for Offers - 2019 Resource Adequacy Products
To: Tony Zimmer <Tony.Zimmer@ncpa.com>, Jeanne M. Solé <jeanne.sole@sanjoseca.gov>, Morris, Kelly <KELLY.MORRIS@sanjoseca.gov>, Ken Goeke <Ken.Goeke@ncpa.com>, Bernard Erlich <Bernard.Erlich@ncpa.com>, Roxana Khayyam <Roxana.Khayyam@ncpa.com>

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
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| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

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- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements

- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

**Disclaimers:**

**SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.**

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**The address for submitting protests is:**

**Attention: Lori Mitchell, Director**

**City of San Jose, Department of Community Energy**

**200 East Santa Clara Street, 14th Floor**

**San Jose, CA 95113**

**Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov**

Tony Zimmer

Assistant General Manager, Power Management

**Northern California Power Agency**

*A Public Agency*

651 Commerce Drive

Roseville, CA 95678-6420

(916) 781-4229 Phone

www.ncpa.com

EXHIBIT: SJCE #41
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 10-12-2018-RE SJCE Request for Offers - 2019 -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 10-12-2018-RE SJCE REQUEST FOR OFFERS - 2019 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Ashley Lewis Bernstein <Ashley.Bernstein@calpine.com>
**Sent:** Friday, October 12, 2018 9:12 AM
**To:** Sole, Jeanne; Morris, Kelly; Tony Zimmer
**Cc:** Jason Armenta
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Jeanne/Kelly/Tony-

Calpine can do the 177 MW GBA for January at $3.00/kW-mo. Please let us know as soon as possible if San Jose is interested.

Thanks,
Ashley

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer; Jeanne M. Solé; Morris, Kelly; Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

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| | | | | |
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- Off-Balance Sheet Liabilities, if any

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The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

COMPANY CONFIDENTIALITY NOTICE: The information in this e-mail may be confidential and/or privileged and protected by work product immunity or other legal rules. No confidentiality or privilege is waived or lost by mis-transmission. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail and its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your computer system.

EXHIBIT: SJCE #42
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 10-15-2018-Re SJCE Request for Offers - 2019 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 10-15-2018-RE SJCE REQUEST FOR OFFERS - 2019 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Chelsea Keys <ckeys@peninsulacleanenergy.com>
**Sent:** Monday, October 15, 2018 9:53 AM
**To:** Sole, Jeanne
**Cc:** Siobhan Doherty; Tony Zimmer
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** image003.png

Good morning Jeanne,

I have aside these volumes for you which we discussed last Friday. I did have to make Jan & Feb the same volumes to balance out our own position. I hope the minor adjustment down from 84.21 MW to 82.72 MW in Feb. isn't a problem for you. I can send you a confirm later this week so that we can work out the collateral arrangement. Let me know if you need anything else from our end in the meantime. Enjoy your Monday.

**PG&E Other**

| Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 |
|---|---|---|---|---|---|
| **82.72** | **82.72** | | | | **10.10** |
| $ 4.30 | $ 4.30 | | | | $ 6.35 |

**System**

| Feb-19 |
|---|
| **26.6** |
| $ 1.75 |

Thanks,

Chelsea Keys
Power Resources Manager
Peninsula Clean Energy
ckeys@peninsulacleanenergy.com
(650) 382-2002

Visit us at:
www.peninsulacleanenergy.com

On Fri, Oct 12, 2018 at 1:03 PM Sole, Jeanne <jeanne.sole@sanjoseca.gov> wrote:

> We should be able to work something out in terms of collateral.

**Jeanne M. Solé**

**Deputy Director of Power Resources**

200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov

SanJoseCleanEnergy.org

**From:** Chelsea Keys [mailto:ckeys@peninsulacleanenergy.com]
**Sent:** Friday, October 12, 2018 12:59 PM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Siobhan Doherty <sdoherty@peninsulacleanenergy.com>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Thank you and yes I don't believe it should be an issue but we can discuss. I will note that it is fairly typical to require a 20% collateral which is something we'd likely require given the size of the transaction. Is that something SJCE can provide for this type of deal?

Thanks,

Chelsea Keys

Power Resources Manager

Peninsula Clean Energy

ckeys@peninsulacleanenergy.com

(650) 382-2002

Visit us at:

www.peninsulacleanenergy.com

On Fri, Oct 12, 2018 at 12:50 PM Sole, Jeanne <jeanne.sole@sanjoseca.gov> wrote:

Chelsea, I am on the phone still but see in yellow the amounts we would like to buy subject you being financially qualified which I am hopeful will not be a problem.

**Jeanne M. Solé**

**Deputy Director of Power Resources**

200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov

SanJoseCleanEnergy.org

---

**From:** Sole, Jeanne
**Sent:** Friday, October 12, 2018 10:58 AM
**To:** 'Chelsea Keys' <ckeys@peninsulacleanenergy.com>
**Cc:** 'Siobhan Doherty' <sdoherty@peninsulacleanenergy.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Chelsea, I have a call with NCPA at 11 to discuss. Can I call you after that (around noon)?

**Jeanne M. Solé**

**Deputy Director of Power Resources**

200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov

SanJoseCleanEnergy.org

**From:** Chelsea Keys [mailto:ckeys@peninsulacleanenergy.com]
**Sent:** Friday, October 12, 2018 10:29 AM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Siobhan Doherty <sdoherty@peninsulacleanenergy.com>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hello Jeanne,

I just tried giving you a call to discuss the volumes I showed you. Do you have a minute to discuss? Unfortunately, I'll have to make a decision here quick since I have another counterparty asking for a response. Let me know if you would like to move forward.

Thank you,

Chelsea Keys

Power Resources Manager

Peninsula Clean Energy

ckeys@peninsulacleanenergy.com

(650) 382-2002

Visit us at:

www.peninsulacleanenergy.com

On Thu, Oct 11, 2018 at 6:04 PM Chelsea Keys <ckeys@peninsulacleanenergy.com> wrote:

Good evening Jeanne,

So sorry I wasn't able to get back to you earlier as planned. We had our Wright Solar groundbreaking event today and we just got back a bit ago. Here are some volumes and prices. Like I mentioned we will have to know rather quickly if you're interested. You can find PCE's financials here on our website: https://www.peninsulacleanenergy.com/budget-and-finances/

Please let me know if you need anything else from us regarding our financials. Have a great evening.

**System**

| Jan-19 | Feb-19 |
|---|---|
| 54 | 26.6 |
| $ 1.75 | $ 1.75 |

**Local PG&E Other**

| Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 |
|---|---|---|---|---|---|---|---|
| 82.72 | 84.21 | 10.10 | | | 10.10 | | |
| $ 4.30 | $ 4.30 | $ 4.30 | | | $ 6.35 | | |

Thanks,

Chelsea Keys

Power Resources Manager

Peninsula Clean Energy

ckeys@peninsulacleanenergy.com

(650) 382-2002

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**Jeanne M. Solé**

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200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov

SanJoseCleanEnergy.org

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**Sent:** Thursday, October 11, 2018 10:08 AM
**To:** Siobhan Doherty <sdoherty@peninsulacleanenergy.com>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>
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ckeys@peninsulacleanenergy.com

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Date: Thu, Oct 11, 2018 at 6:37 AM
Subject: SJCE Request for Offers - 2019 Resource Adequacy Products
To: Tony Zimmer <Tony.Zimmer@ncpa.com>, Jeanne M. Solé <jeanne.sole@sanjoseca.gov>, Morris, Kelly <KELLY.MORRIS@sanjoseca.gov>, Ken Goeke <Ken.Goeke@ncpa.com>, Bernard Erlich <Bernard.Erlich@ncpa.com>, Roxana Khayyam <Roxana.Khayyam@ncpa.com>

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

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Assistant General Manager, Power Management

**Northern California Power Agency**

*A Public Agency*

651 Commerce Drive

Roseville, CA 95678-6420

(916) 781-4229 Phone

www.ncpa.com

EXHIBIT: SJCE #43
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/10-18-2018-Re SJCE Request for Offers - 2019 Resource Adequacy Products - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-18-2018-RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Tony Zimmer <Tony.Zimmer@ncpa.com>
**Sent:** Thursday, October 18, 2018 9:05 PM
**To:** Mulberg, Erin
**Cc:** Power Purchasing; Sole, Jeanne; Smith, Randall
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Thanks for following up. SJCE would like to purchase the Local GBA amount offered by CleanPower SF. SJCE is re-evaluating it's system need at this time, so they are not prepared to move forward at this time with the system you offered.

Would you like to add the additional GBA volume to the confirm we are currently working on now, or would you like to transact that through a separate confirm?

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Thanks,

Tony Zimmer

Sent from my iPhone

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> Thanks,
> Erin
>
> Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

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**Sent:** Monday, October 15, 2018 11:18 AM
**To:** Power Purchasing <powerpurchasing@sfwater.org>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin (or to Whom It May Concern),

Thank you for submitting your offer. I will review your offer with SJCE, and will work to respond to you promptly.

Best Regards,

Tony Zimmer
Assistant General Manager, Power Management
<image001.jpg>
**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

---

**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Monday, October 15, 2018 10:36 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Power Purchasing <powerpurchasing@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Jeanne and Tony,

Please find attached CleanPowerSF's bid to sell SJCE 2019 Resource Adequacy products. Feel free to reach out with any questions.

Best,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102
<image002.png>

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>; Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact

SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

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651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #44
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-19-2018-SFPUC RE SJCE Request for Offers - 2019 Resource Adequacy Products -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-19-2018-SFPUC RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Sole, Jeanne
**Sent:** Friday, October 19, 2018 5:44 PM
**To:** Tony Zimmer; Mulberg, Erin
**Cc:** Power Purchasing; Smith, Randall; Morris, Kelly; Mestaz, Jeannette
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** 10-9-[2]-Tracked Changes_CleanPowerSF-SJCE_2019 RA Confirm_System_Draft (10-3-2018).docx; 10-9-[3]Tracked Changes_CleanPowerSF-SJCE_2019 RA Confirm_Local_Draft (10-3-2018).docx; 10-9-Tracked Changes_CleanPowerSF-SJCE_2019 RA Confirm_System+Flex_Draft (10-3-2018).docx

Hi Erin,

Tony is correct. We had agreed to some purchases previously, and had not gotten back to you about your more recent offer. We would like to buy the Nov. GBA RA included in the more recent offer. To make sure we are all on the same page, I have included below a table of what we have now agreed to buy.

We had agreed on confirmations for the initial purchases. I have added the November GBA RA to the Local RA confirmation and attached all three confirmations just to have everything in one place.

We just need to get approval from our Risk Oversight Committee (ROC) for the transaction. We will present it along with other outstanding RA deals to our ROC next Friday.

Please let me know if you have any concerns about any of this.

Have a nice weekend!

| | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Totals |
|---|---|---|---|---|---|---|
| CleanPowerSF System (MW-mo) | 54.1 | 0 | 18.1 | 69.1 | 0 | |
| Price $ | 6.5 | 0 | 6.5 | 3.5 | 0 | |
| Total Amount $ | 351650 | 0 | 117650 | 241850 | 0 | 711150 |
| CleanPowerSF System (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| Price $ | 6.6 | 0 | 6.6 | 3.6 | 0 | |
| Total Amount $ | 309540 | 0 | 309540 | 168840 | 0 | 787920 |
| CleanPowerSF Flex (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| CleanPowerSF GBA (MW-mo) | 22 | 0 | 22 | 36 | 12 | |
| Price $ | 6.5 | 0 | 6.5 | 4.5 | 4 | |
| Total Amount $ | 143000 | 0 | 143000 | 162000 | 48000 | 496000 |
| CleanPowerSF PG&E Other (MW-mo) | 25 | 0 | 0 | 0 | 0 | |
| Price $ | 6.5 | 0 | 0 | 0 | 0 | |
| Total Amount $ | 162500 | 0 | 0 | 0 | 0 | 162500 |
| | | | | | | 2157570 |

**Jeanne M. Solé**
Deputy Director of Power Resources

200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

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Tony Zimmer
Assistant General Manager, Power Management

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Roseville, CA 95678-6420
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**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**
**BETWEEN**
**CITY OF SAN ~~JOSE CLEAN ENERGY~~JOSÉ**
**AND**
**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF**

This confirmation letter ~~("~~("Confirmation~~")~~") confirms the Transaction between the **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** ("Seller") and ~~San Jose Clean Energy~~City of San José, a California municipality ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2018 (the ~~"~~"Confirmation Effective Date~~"),~~"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

## ARTICLE 1
## DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

**1.2** ~~"~~"Availability Incentive Payments~~"~~" has the meaning set forth in the Tariff.

**1.3** "Availability Standards~~"~~" has the meaning set forth in the Tariff.

**1.4** ~~"~~"Buyer~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.5** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

**1.6** ~~"~~"Confirmation~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.7** ~~"~~"Confirmation Effective Date~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.8** ~~"~~"Contingent Firm RA Product~~"~~" has the meaning specified in Section 3.4 hereof.

**1.9** ~~"~~"Contract Price~~"~~" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

**1.10** ~~"~~"Contract Quantity~~"~~" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in ~~table~~the Contract Quantity Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.11** ~~"~~"CPUC Decisions~~"~~" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.12** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for ~~LSE's~~LSEs to demonstrate compliance with the CPUC's resource adequacy program.

**1.13** ~~"~~"Delivery Period~~"~~" has the meaning specified in Section 4.1 hereof.

**1.14** ~~"~~"Delivery Point~~"~~" has the meaning specified in Section 4.2 hereof.

**1.15** ~~"~~"Designated RA Capacity~~"~~" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity ~~with respect to~~, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

**1.16** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

**1.17** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.18** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

**1.19** ~~"~~"Firm RA Product~~"~~" has the meaning specified in Section 3.3 hereof.

**1.20** ~~"~~"Flexible Capacity Requirements~~"~~" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.21** "Flexible RA Product" has the meaning specified in Section 3.2 hereof.

**1.22** ~~"~~"GADS~~"~~" means the Generating Availability Data System or its successor.

**1.23** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

**1.24** ~~"~~"Governmental Body~~"~~" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.25** ~~"~~"LAR~~"~~" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** ~~"~~"LAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other

Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.27** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

**1.28** "LRA" means Local Regulatory Authority, as defined in the Tariff.

**1.29** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.30** "Master Agreement" has the meaning specified in the introductory paragraph hereof.

**1.31** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

**1.32** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

**1.33** "NERC" means the North American Electric Reliability Council, or its successor.

**1.34** "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

**1.35** "Net Qualifying Capacity" has the meaning set forth in the Tariff.

**1.36** "Non-Availability Charges" has the meaning set forth in the Tariff.

**1.37** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.38** "Outage Schedule" has the meaning specified in Article 6 hereof.

**1.39** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.40** "Product" has the meaning specified in Article 3 hereof.

**1.41** "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 100%.

**1.42** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.43** "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

**1.44** "RAR" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.45** ~~"~~"RAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, CAISO, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

**1.46** ~~"~~"RAR Showings~~"~~" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.

**1.47** ~~"~~"Replacement Capacity~~"~~" has the meaning specified in Section 4.7 hereof.

**1.48** "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

**1.49** ~~"~~"Resource Adequacy Plan" has the meaning set forth in the Tariff.

**~~1.49~~1.50** "Resource Category~~"~~" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**~~1.50~~1.51** "RMR Agreement" has the meaning set forth in the Tariff.

**1.52** ~~"~~"San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**~~1.51~~1.53** "Seller~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.52~~1.54** "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**~~1.53~~1.55** ~~"~~"Supply Plan~~"~~" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

**~~1.54~~1.56** ~~"~~"Tariff~~"~~" means the tariff and protocol provisions of the CAISO, including associated rules, procedures, and business practice manuals, as amended or supplemented from time to time.

**~~1.55~~1.57** ~~"~~"Transaction~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.56~~1.58** ~~"~~"Unit~~"~~" or ~~"~~"Units~~"~~" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

**~~1.57~~1.59** ~~"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.~~

**~~1.58~~1.60** "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitations and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent

the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

~~1.59~~1.61 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

**ARTICLE 2**
**UNIT INFORMATION**

| | **North Path 26 System Resource Adequacy** |
|---|---|
| Name | |
| Location | |
| CAISO Resource ID | |
| Resource Type | |
| Resource Category (1, 2, 3, or 4) | |
| Point of Interconnection with the CAISO controlled grid ("Substation") | |
| Path 26 (North, South, or None) | North |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| LAR Attributes (Yes/No) | No |
| If yes: Local Capacity Area (as of the Confirmation Effective Date): | N/A |
| Product Type | Generic |
| If Generic: Unit NQC (as of the Confirmation Effective Date) | |
| If Flexible: Unit EFC (as of the Confirmation Effective Date):<br>Flexible Capacity Category (Base/Peak/Super-peak): | N/A |

**ARTICLE 3**
**RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### 3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

### 3.2 ☐ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

### 3.3 ☐ Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

### 3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, ~~then Seller may~~and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then Seller may either reduce the Contract Quantity or provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

## ARTICLE 4
## DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be July 1, 2019 through July 31, 2019; September 1, 2019 through September 30, 2019; and October 1, 2019 through October 31, 2019 inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity of each Unit for the Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month / Year | System RA Capacity Quantity (MW) |
|---|---|
| July 2019 | 54.10 |
| September 2019 | 18.10 |
| October 2019 | 69.10 |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than ~~ten (10~~fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit NQC was reduced since the Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit EFC was reduced since the Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each

case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

**4.5 Alternate Capacity and Replacement Units**

a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**4.6 Delivery of Product**

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to CAISO and identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen~~ten~~ (15~~0~~) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

(c) Once the ~~Buyer~~Buyer's Resource Adequacy Plan and Seller's Supply ~~Plans~~Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for Unit in any Showing Month, the Parties will confer, make

such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

### 4.7 Damages for Failure to Provide or Receive Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in the Master Agreement, the following damages in lieu of damages specified in the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to ~~pay to~~indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the ~~Capacity Replacement Price as provided in Section 4.7 of this Confirmation for any failure to deliver or provide~~CPUC or the ~~Product~~CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity before delivery as required under Section 4.6;

(c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to

pay the foregoing amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**RA CAPACITY FLAT PRICE TABLE**

| Contract Year/Month | System RA Capacity Flat Price ($/kW-month) |
|---|---|
| July 2019 | $6.50 |
| September 2019 | $6.50 |
| October 2019 | $3.50 |

If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

### 4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5
## CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6
## PLANNED OUTAGES

**6.1** Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2018) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Delivery Period ~~("~~("Outage Schedule~~").~~"). Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

**6.2** Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

## ARTICLE 7
## OTHER BUYER AND SELLER COVENANTS

**7.1** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to ""deliverability"" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by

the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

**7.2** Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(g) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(h) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity

(i) ~~(i)~~ Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(j) ~~(j)~~ Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8
## CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, If either Party~~Buyer~~ becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to ~~Buyer~~either Party under the California Public Records Act (California Government Code Section 6250 et

seq.)) to disclose any confidential information of ~~Seller, Buyer~~the other Party, the Party subject to the request may do so after providing ~~Seller~~the other Party with prompt notice so that ~~Seller, in~~such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

## ARTICLE 9
## BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

## ARTICLE 10
## COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

## ARTICLE 11
## GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws.

## ARTICLE 12
## COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect ~~in the~~he performance under this Confirmation ("Applicable Law") and must at all times comply with Applicable Law~~all such laws, ordinance~~ordinances~~, or regulations they~~ as it may be amended from time to time.

## ARTICLE 13
## ADDITIONAL TERMS AND CONDITIONS

**13.1 Limited Obligations~~. Buyer's~~**

Seller's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco ("City") or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

**13.2 Guaranteed Maximum Cost~~.~~**

(a) Controller Certification. ~~Buyer's~~Seller's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of ~~Buyer~~Seller are not authorized to request, and ~~Buyer~~Seller is not required to reimburse ~~Seller~~Buyer for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the ~~Buyer~~Seller are not authorized to offer or promise, nor is ~~Buyer~~Seller required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Biannual Budget Process. For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, ~~Buyer~~Seller agrees ~~it~~ to take all necessary ~~action~~actions to ~~will~~ include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

**13.2~~3~~3 Prohibition on Political Activity with City Funds~~.~~**

In accordance with San Francisco Administrative Code Chapter 12.G, Buyer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, ~~"~~"Political Activity~~")~~") in the performance of this Confirmation. Buyer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Buyer violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Confirmation, and (ii) prohibit Buyer from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Buyer's use of profit as a violation of this Section.

**13.4 Designated Fund and Limited Obligations**

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

**13.5 Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**13.6 Entire Agreement; No Oral Agreements or Modifications**

This Confirmation and the WSPP Agreement set forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| | |
|---|---|
| **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** | ~~San Jose Clean Energy~~City of San José, a California municipality |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| ~~Date:~~ _____ | ~~Date:~~ _____ |
| Date: _____ | Date: _____ |

**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**
**BETWEEN**
**CITY OF SAN ~~JOSE CLEAN ENERGY~~JOSÉ**
**AND**
**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF**

This confirmation letter ~~("~~("Confirmation~~")~~") confirms the Transaction between the **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** ("Seller") and ~~San Jose Clean Energy~~City of San José, a California municipality ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2018 (the ~~"~~"Confirmation Effective Date~~"),~~"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

## ARTICLE 1
## DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

**1.2** ~~"~~"Availability Incentive Payments~~"~~" has the meaning set forth in the Tariff.

**1.3** "Availability Standards~~"~~" has the meaning set forth in the Tariff.

**1.4** ~~"~~"Buyer~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.5** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

**1.6** ~~"~~"Confirmation~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.7** ~~"~~"Confirmation Effective Date~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.8** ~~"~~"Contingent Firm RA Product~~"~~" has the meaning specified in Section 3.4 hereof.

**1.9** ~~"~~"Contract Price~~"~~" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

**1.10** ~~"~~"Contract Quantity~~"~~" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in ~~table~~the Contract Quantity Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.11** ~~"~~"CPUC Decisions~~"~~" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050,

15-06-063, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.12** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for ~~LSE's~~LSEs to demonstrate compliance with the CPUC's resource adequacy program.

**1.13** ~~"~~"Delivery Period~~"~~" has the meaning specified in Section 4.1 hereof.

**1.14** ~~"~~"Delivery Point~~"~~" has the meaning specified in Section 4.2 hereof.

**1.15** ~~"~~"Designated RA Capacity~~"~~" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity ~~with respect to~~, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

**1.16** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

**1.17** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.18** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

**1.19** ~~"~~"Firm RA Product~~"~~" has the meaning specified in Section 3.3 hereof.

**1.20** ~~"~~"Flexible Capacity Requirements~~"~~" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.21** "Flexible RA Product" has the meaning specified in Section 3.2 hereof.

**1.22** ~~"~~"GADS~~"~~" means the Generating Availability Data System or its successor.

**1.23** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

**1.24** ~~"~~"Governmental Body~~"~~" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.25** ~~"~~"LAR~~"~~" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** ~~"~~"LAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes

which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.27** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

**1.28** "LRA" means Local Regulatory Authority, as defined in the Tariff.

**1.29** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.30** "Master Agreement" has the meaning specified in the introductory paragraph hereof.

**1.31** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

**1.32** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

**1.33** "NERC" means the North American Electric Reliability Council, or its successor.

**1.34** "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

**1.35** "Net Qualifying Capacity" has the meaning set forth in the Tariff.

**1.36** "Non-Availability Charges" has the meaning set forth in the Tariff.

**1.37** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.38** "Outage Schedule" has the meaning specified in Article 6 hereof.

**1.39** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.40** "Product" has the meaning specified in Article 3 hereof.

**1.41** "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 100%.

**1.42** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.43** "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

**1.44** ~~"~~"RAR~~"~~" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.45** ~~"~~"RAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, CAISO, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

**1.46** ~~"~~"RAR Showings~~"~~" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.

**1.47** ~~"~~"Replacement Capacity~~"~~" has the meaning specified in Section 4.7 hereof.

**1.48** "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

**1.49** "Resource Adequacy Plan" has the meaning set forth in the Tariff.

**~~1.49~~1.50** "Resource Category~~"~~" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**~~1.50~~1.51** "RMR Agreement" has the meaning set forth in the Tariff.

**1.52** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**~~1.51~~1.53** "Seller~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.52~~1.54** "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**~~1.53~~1.55** ~~"~~"Supply Plan~~"~~" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

**~~1.54~~1.56** ~~"~~"Tariff~~"~~" means the tariff and protocol provisions of the CAISO, including associated rules, procedures, and business practice manuals, as amended or supplemented from time to time.

**~~1.55~~1.57** ~~"~~"Transaction~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.56~~1.58** ~~"~~"Unit~~"~~" or ~~"~~"Units~~"~~" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

**~~1.57~~1.59** ~~"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.~~

**~~1.58~~1.60** "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of

flexible capacity while operating consistent with the operational limitations and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

~~1.59~~1.61 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2
## UNIT INFORMATION

| | Greater Bay Area – Local Resource Adequacy | Other PG&E Areas – Local Resource Adequacy |
|---|---|---|
| Name | | |
| Location | | |
| CAISO Resource ID | | |
| Resource Type | | |
| Resource Category (1, 2, 3, or 4) | | |
| Point of Interconnection with the CAISO controlled grid ("Substation") | | |
| Path 26 (North, South, or None) | North | North |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | | |
| Run Hour Restrictions | | |
| LAR Attributes (Yes/No) | Yes | Yes |
| If yes: Local Capacity Area (as of the Confirmation Effective Date): | Greater Bay Area | Other PG&E Areas |
| Product Type | Generic | Generic |
| If Generic: Unit NQC (as of the Confirmation Effective Date) | | |
| If Flexible: Unit EFC (as of the Confirmation Effective Date):<br>Flexible Capacity Category (Base/Peak/Super-peak): | N/A | N/A |

## ARTICLE 3
## RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the

CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### 3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

### 3.2 ☐ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

### 3.3 ☐ Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

### 3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, ~~then Seller may~~and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then Seller may either reduce the Contract Quantity or provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections ~~4~~4.7 and 4.8 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

## ARTICLE 4
## DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be July 1, 2019 through July 31, 2019; September 1, 2019 through September 30, 2019; and October 1, 2019 through October 31, 2019 inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity of each Unit for the Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month / Year | Greater Bay Area RA Capacity Quantity (MW) | Other PG&E Areas RA Capacity Quantity (MW) |
|---|---|---|
| July 2019 | 22.00 | 25.00 |
| September 2019 | 22.00 | - |
| October 2019 | 36.00 | - |
| November 2019 | 12.00 | |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than ~~ten (10~~fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit NQC was reduced since the Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit EFC was reduced since the Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract

Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

**4.5 Alternate Capacity and Replacement Units**

a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**4.6 Delivery of Product**

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to CAISO and identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen~~ten~~ (15~~0~~) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

(c) Once the ~~Buyer~~Buyer's Resource Adequacy Plan and Seller's Supply ~~Plans~~Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

### 4.7 Damages for Failure to Provide or Receive Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in the Master Agreement, the following damages in lieu of damages specified in the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to ~~pay to~~indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the ~~Capacity Replacement Price as provided in Section 4.7 of this Confirmation for any failure to deliver or provide~~CPUC or the ~~Product~~CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity before delivery as required under Section 4.6;

(c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**RA CAPACITY FLAT PRICE TABLE**

| Contract Year/Month | Greater Bay Area RA Capacity Flat Price ($/kW-month) | Other PG&E Areas RA Capacity Flat Price ($/kW-month) |
|---|---|---|
| July 2019 | $6.50 | $6.50 |
| September 2019 | $6.50 | - |
| October 2019 | $4.50 | - |
| November 2019 | $4.00 | |

If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

### 4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided

to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5
## CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6
## PLANNED OUTAGES

**6.1** Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2018) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Delivery Period ~~("~~("Outage Schedule~~").~~"). Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

**6.2** Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

## ARTICLE 7
## OTHER BUYER AND SELLER COVENANTS

**7.1** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO

Controlled Grid, pursuant to ""deliverability"" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

**7.2** Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(g) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(h) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity

(i) ~~(i)~~ Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(j) ~~(j)~~ Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8
## CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition,

If either Party~~Buyer~~ becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to ~~Buyer~~either Party under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of ~~Seller, Buyer~~the other Party, the Party subject to the request may do so after providing ~~Seller~~the other Party with prompt notice so that ~~Seller, in~~such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

## ARTICLE 9
## BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

## ARTICLE 10
## COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

## ARTICLE 11
## GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws.

## ARTICLE 12
## COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect ~~in~~ the performance under this Confirmation ("Applicable Law") and must at all times comply with Applicable Law~~all such laws, ordinance~~ordinances~~, or regulations they~~ as it may be amended from time to time.

## ARTICLE 13
## ADDITIONAL TERMS AND CONDITIONS

### 13.1 Limited Obligations~~. Buyer's~~

Seller's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco ("City") or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

### 13.2 Guaranteed Maximum Cost~~.~~

(a) Controller Certification. ~~Buyer's~~Seller's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of ~~Buyer~~Seller are not authorized to request, and ~~Buyer~~Seller is not required to reimburse ~~Seller~~Buyer for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the ~~Buyer~~Seller are not authorized to offer or promise, nor is ~~Buyer~~Seller required to honor, any offered or promised additional funding in excess

of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Biannual Budget Process. For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, ~~Buyer~~Seller agrees ~~it~~ to take all necessary ~~action~~actions to ~~will~~ include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

**13.~~2~~3 Prohibition on Political Activity with City Funds~~.~~**

In accordance with San Francisco Administrative Code Chapter 12.G, Buyer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, ~~"~~"Political Activity~~")~~") in the performance of this Confirmation. Buyer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Buyer violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Confirmation, and (ii) prohibit Buyer from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Buyer's use of profit as a violation of this Section.

**13.4 Designated Fund and Limited Obligations**

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

**13.5 Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**13.6 Entire Agreement; No Oral Agreements or Modifications**

This Confirmation and the WSPP Agreement set forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| | |
|---|---|
| **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** | ~~San Jose Clean Energy~~City of San José, a California municipality |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| ~~Date:~~ _____ | ~~Date:~~ _____ |
| Date: _____ | Date: _____ |

**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**
**BETWEEN**
**CITY OF SAN ~~JOSE CLEAN ENERGY~~JOSÉ**
**AND**
**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF**

This confirmation letter ~~("~~("Confirmation~~")~~") confirms the Transaction between the **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** ("Seller") and ~~San Jose Clean Energy~~City of San José, a California municipality ("Buyer"), each individually a "Party" and together the "Parties", dated as of _____, 2018 (the ~~"~~"Confirmation Effective Date~~"),~~"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

## ARTICLE 1
## DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

**1.2** ~~"~~"Availability Incentive Payments~~"~~" has the meaning set forth in the Tariff.

**1.3** "Availability Standards~~"~~" has the meaning set forth in the Tariff.

**1.4** ~~"~~"Buyer~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.5** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

**1.6** ~~"~~"Confirmation~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.7** ~~"~~"Confirmation Effective Date~~"~~" has the meaning specified in the introductory paragraph hereof.

**1.8** ~~"~~"Contingent Firm RA Product~~"~~" has the meaning specified in Section 3.4 hereof.

**1.9** ~~"~~"Contract Price~~"~~" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

**1.10** ~~"~~"Contract Quantity~~"~~" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in ~~table~~the Contract Quantity Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.11** ~~"~~"CPUC Decisions~~"~~" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.12** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for ~~LSE's~~LSEs to demonstrate compliance with the CPUC's resource adequacy program.

**1.13** ~~"~~"Delivery Period~~"~~" has the meaning specified in Section 4.1 hereof.

**1.14** ~~"~~"Delivery Point~~"~~" has the meaning specified in Section 4.2 hereof.

**1.15** ~~"~~"Designated RA Capacity~~"~~" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity ~~with respect to~~, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

**1.16** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

**1.17** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.18** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

**1.19** ~~"~~"Firm RA Product~~"~~" has the meaning specified in Section 3.3 hereof.

**1.20** ~~"~~"Flexible Capacity Requirements~~"~~" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.21** "Flexible RA Product" has the meaning specified in Section 3.2 hereof.

**1.22** ~~"~~"GADS~~"~~" means the Generating Availability Data System or its successor.

**1.23** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

**1.24** ~~"~~"Governmental Body~~"~~" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.25** ~~"~~"LAR~~"~~" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** ~~"~~"LAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other

Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.27** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

**1.28** "LRA" means Local Regulatory Authority, as defined in the Tariff.

**1.29** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.30** "Master Agreement" has the meaning specified in the introductory paragraph hereof.

**1.31** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

**1.32** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

**1.33** "NERC" means the North American Electric Reliability Council, or its successor.

**1.34** "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

**1.35** "Net Qualifying Capacity" has the meaning set forth in the Tariff.

**1.36** "Non-Availability Charges" has the meaning set forth in the Tariff.

**1.37** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.38** "Outage Schedule" has the meaning specified in Article 6 hereof.

**1.39** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.40** "Product" has the meaning specified in Article 3 hereof.

**1.41** "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 100%.

**1.42** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.43** "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

**1.44** "RAR" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.45** ~~"~~"RAR Attributes~~"~~" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, CAISO, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

**1.46** ~~"~~"RAR Showings~~"~~" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.

**1.47** ~~"~~"Replacement Capacity~~"~~" has the meaning specified in Section 4.7 hereof.

**1.48** "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

**1.49** ~~"~~"Resource Adequacy Plan" has the meaning set forth in the Tariff.

**~~1.49~~1.50** "Resource Category~~"~~" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**~~1.50~~1.51** "RMR Agreement" has the meaning set forth in the Tariff.

**1.52** ~~"~~"San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**~~1.51~~1.53** "Seller~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.52~~1.54** "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**~~1.53~~1.55** ~~"~~"Supply Plan~~"~~" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

**~~1.54~~1.56** ~~"~~"Tariff~~"~~" means the tariff and protocol provisions of the CAISO, including associated rules, procedures, and business practice manuals, as amended or supplemented from time to time.

**~~1.55~~1.57** ~~"~~"Transaction~~"~~" has the meaning specified in the introductory paragraph hereof.

**~~1.56~~1.58** ~~"~~"Unit~~"~~" or ~~"~~"Units~~"~~" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

**~~1.57~~1.59** ~~"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.~~

**~~1.58~~1.60** "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitations and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent

the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

~~1.59~~1.61 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2
## UNIT INFORMATION

| | **North Path 26 System Flexible Resource Adequacy** |
|---|---|
| Name | |
| Location | |
| CAISO Resource ID | |
| Resource Type | |
| Resource Category (1, 2, 3, or 4) | |
| Point of Interconnection with the CAISO controlled grid ("Substation") | |
| Path 26 (North, South, or None) | North |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| LAR Attributes (Yes/No) | No |
| If yes: Local Capacity Area (as of the Confirmation Effective Date): | N/A |
| Product Type | Flexible |
| If Generic: Unit NQC (as of the Confirmation Effective Date) | N/A |
| If Flexible: Unit EFC (as of the Confirmation Effective Date):<br>Flexible Capacity Category (Base/Peak/Super-peak): | |

## ARTICLE 3
## RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### 3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

### 3.2 ☒ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

### 3.3 ☐ Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

### 3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, ~~then Seller may~~and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then Seller may either reduce the Contract Quantity or provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

## ARTICLE 4
## DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be July 1, 2019 through July 31, 2019; September 1, 2019 through September 30, 2019; and October 1, 2019 through October 31, 2019 inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity of each Unit for the Delivery Period shall be:

**Contract Quantity (MWs)**

| Contract Month / Year | System RA Capacity Quantity (MW) |
|---|---|
| July 2019 | 46.90 |
| September 2019 | 46.90 |
| October 2019 | 46.90 |

### 4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than ~~ten (10~~fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit NQC was reduced since the Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit EFC was reduced since the Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each

case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

**4.5 Alternate Capacity and Replacement Units**

a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than ~~ten (10~~fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**4.6 Delivery of Product**

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to CAISO and identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen~~ten~~ (15~~0~~) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

(c) Once the ~~Buyer~~Buyer's Resource Adequacy Plan and Seller's Supply ~~Plans~~Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for Unit in any Showing Month, the Parties will confer, make

such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

### 4.7 Damages for Failure to Provide or Receive Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in the Master Agreement, the following damages in lieu of damages specified in the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to ~~pay to~~indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the ~~Capacity Replacement Price as provided in Section 4.7 of this Confirmation for any failure to deliver or provide~~CPUC or the ~~Product~~CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity before delivery as required under Section 4.6;

(c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to

pay the foregoing amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**RA CAPACITY FLAT PRICE TABLE**

| Contract Year/Month | System RA Capacity Flat Price ($/kW-month) |
|---|---|
| July 2019 | $6.60 |
| September 2019 | $6.60 |
| October 2019 | $3.60 |

If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

### 4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5
## CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6
## PLANNED OUTAGES

**6.1** Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2018) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Delivery Period ~~("~~("Outage Schedule~~").~~"). Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

**6.2** Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

## ARTICLE 7
## OTHER BUYER AND SELLER COVENANTS

**7.1** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to ~~"~~"deliverability~~"~~" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by

the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

**7.2** Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(g) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(h) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity

(i) ~~(i)~~ Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(j) ~~(j)~~ Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8
## CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, If either Party~~Buyer~~ becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to ~~Buyer~~either Party under the California Public Records Act (California Government Code Section 6250 et

seq.)) to disclose any confidential information of ~~Seller, Buyer~~the other Party, the Party subject to the request may do so after providing ~~Seller~~the other Party with prompt notice so that ~~Seller, in~~such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

## ARTICLE 9
## BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

## ARTICLE 10
## COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

## ARTICLE 11
## GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws.

## ARTICLE 12
## COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect ~~in~~ the performance under this Confirmation ("Applicable Law") and must at all times comply with all such Applicable Law~~laws, ordinance~~ordinances~~, or regulations~~ ~~they~~as it may be amended from time to time.

## ARTICLE 13
## ADDITIONAL TERMS AND CONDITIONS

### 13.1 Limited Obligations~~. Buyer's~~

Seller's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco ("City") or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

### 13.2 Guaranteed Maximum Cost~~.~~

(a) Controller Certification. ~~Buyer's~~Seller's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of ~~Buyer~~Seller are not authorized to request, and ~~Buyer~~Seller is not required to reimburse ~~Seller~~Buyer for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the ~~Buyer~~Seller are not authorized to offer or promise, nor is ~~Buyer~~Seller required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Biannual Budget Process. For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, ~~Buyer~~Seller agrees ~~it~~ to take all necessary ~~action~~actions to ~~will~~ include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

**13.~~2~~3 Prohibition on Political Activity with City Funds~~.~~**

In accordance with San Francisco Administrative Code Chapter 12.G, Buyer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, ~~"~~"Political Activity~~")~~") in the performance of this Confirmation. Buyer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Buyer violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Confirmation, and (ii) prohibit Buyer from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Buyer's use of profit as a violation of this Section.

**13.4 Designated Fund and Limited Obligations**

Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement.

(a) Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

**13.5 Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**13.6 Entire Agreement; No Oral Agreements or Modifications**

This Confirmation and the WSPP Agreement set forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| | |
|---|---|
| **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** | ~~San Jose Clean Energy~~**City of San José, a California municipality** |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| ~~Date:~~ _____ | ~~Date:~~ _____ |
| Date: _____ | Date: _____ |

EXHIBIT: SJCE #45
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-24-2018-SFPUC-RE SJCE Request for Offers - 2019 Resource Adequacy Products -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-24-2018-SFPUC-RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Sole, Jeanne
**Sent:** Wednesday, October 24, 2018 11:43 AM
**To:** Mulberg, Erin
**Cc:** Power Purchasing; Smith, Randall; Morris, Kelly; Mestaz, Jeannette; Tony Zimmer
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Just checking in to make sure everything is on track for Friday, pending approval by our ROC. Let me know if there are any outstanding issues.

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

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**From:** Sole, Jeanne
**Sent:** Friday, October 19, 2018 5:44 PM
**To:** 'Tony Zimmer' <Tony.Zimmer@ncpa.com>; Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Tony is correct. We had agreed to some purchases previously, and had not gotten back to you about your more recent offer. We would like to buy the Nov. GBA RA included in the more recent offer. To make sure we are all on the same page, I have included below a table of what we have now agreed to buy.

We had agreed on confirmations for the initial purchases. I have added the November GBA RA to the Local RA confirmation and attached all three confirmations just to have everything in one place.

We just need to get approval from our Risk Oversight Committee (ROC) for the transaction. We will present it along with other outstanding RA deals to our ROC next Friday.

Please let me know if you have any concerns about any of this.

Have a nice weekend!

| | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Totals |
|---|---|---|---|---|---|---|
| CleanPowerSF System (MW-mo) | 54.1 | 0 | 18.1 | 69.1 | 0 | |
| Price $ | 6.5 | 0 | 6.5 | 3.5 | 0 | |
| Total Amount $ | 351650 | 0 | 117650 | 241850 | 0 | 711150 |
| CleanPowerSF System (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Price $ | 6.6 | 0 | 6.6 | 3.6 | 0 | |
| Total Amount $ | 309540 | 0 | 309540 | 168840 | 0 | 787920 |
| CleanPowerSF Flex (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| CleanPowerSF GBA (MW-mo) | 22 | 0 | 22 | 36 | 12 | |
| Price $ | 6.5 | 0 | 6.5 | 4.5 | 4 | |
| Total Amount $ | 143000 | 0 | 143000 | 162000 | 48000 | 496000 |
| CleanPowerSF PG&E Other (MW-mo) | 25 | 0 | 0 | 0 | 0 | |
| Price $ | 6.5 | 0 | 0 | 0 | 0 | |
| Total Amount $ | 162500 | 0 | 0 | 0 | 0 | 162500 |
| | | | | | | 2157570 |

**Jeanne M. Solé**
**Deputy Director of Power Resources**
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 18, 2018 9:05 PM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Smith, Randall <rsmith@sfwater.org>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Thanks for following up. SJCE would like to purchase the Local GBA amount offered by CleanPower SF. SJCE is re-evaluating it's system need at this time, so they are not prepared to move forward at this time with the system you offered.

Would you like to add the additional GBA volume to the confirm we are currently working on now, or would you like to transact that through a separate confirm?

Please let me know if you have any questions, or if you would like to discuss further.

Thanks,

Tony Zimmer

Sent from my iPhone

On Oct 18, 2018, at 5:15 PM, Mulberg, Erin <EMulberg@sfwater.org> wrote:

> Hi Tony,
>
> Just checking in on CleanPowerSF's bid into SJCE's RFO.

Please let us know if there are any questions!

Thanks,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, October 15, 2018 11:18 AM
**To:** Power Purchasing <powerpurchasing@sfwater.org>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin (or to Whom It May Concern),

Thank you for submitting your offer. I will review your offer with SJCE, and will work to respond to you promptly.

Best Regards,

Tony Zimmer
Assistant General Manager, Power Management
*<image001.jpg>*
**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

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**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Monday, October 15, 2018 10:36 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Power Purchasing <powerpurchasing@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Jeanne and Tony,

Please find attached CleanPowerSF's bid to sell SJCE 2019 Resource Adequacy products. Feel free to reach out with any questions.

Best,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>; Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy

200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #46
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ OK 10-24-RE SJCE Request for Offers to Sell CY 2019 - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# OK 10-24-RE SJCE REQUEST FOR OFFERS TO SELL CY 2019 - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Jason Armenta <Jason.Armenta@calpine.com>
**Sent:** Wednesday, October 24, 2018 2:28 PM
**To:** Tony Zimmer; Sole, Jeanne; Morris, Kelly
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products

Two things:

1) In terms of volume on a Feb exchange, I can do up to the full 177 you need, but
2) I might have found enough system supply to sell you 100 MW (on an outright basis) of the 177 GBA you need for Feb. The price would be $3 if you are interested. To the extent that I am able to find more system supply, I may be able to do more.
3) Is SJCE still buying 177 MW of Jan GBA from Calpine?

Let me know. thanks.

Jason

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Wednesday, October 24, 2018 4:22 PM
**To:** Jason Armenta; Jeanne M. Solé; Morris, Kelly
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products

**External Sender: Use caution with links/attachments.**

Hi Jason,

Thanks for providing that option. They don't have much system, but with some possible gymnastics, that may be something they could pull off (with some other pending offers in front of them for system). For consideration, is there a limit on the volume you have for that type of exchange?

Thanks,

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**From:** Jason Armenta <Jason.Armenta@calpine.com>
**Sent:** Wednesday, October 24, 2018 6:04 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>
**Cc:** Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** RE: SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products

Hi Tony,

For February 2019, I can give you Greater Bay Area Local RA in exchange for System RA (NP or SP works) +$1.50 per KW-mo. Would you be able to provide the System in exchange for Local?

Thanks,

Jason

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Tuesday, October 23, 2018 11:30 PM
**To:** Tony Zimmer; Jeanne M. Solé; Morris, Kelly
**Cc:** Ken Goeke; Bernard Erlich; Roxana Khayyam
**Subject:** SJCE Request for Offers to Sell CY 2019 Resource Adequacy Products
**Importance:** High

**External Sender: Use caution with links/attachments.**

**Date Issued: October 23, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 0.0 | 4.4 | 7.2 |
| Feb-19 | 0.0 | 177.0 | 162.0 | 7.2 |
| Mar-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Apr-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| May-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Jun-19 | 0.0 | 6.0 | 0.0 | 0.0 |
| Jul-19 | 412.0 | 4.7 | 55.1 | 34.3 |
| Aug-19 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | |
|---|---|---|---|---|
| Sep-19 | 678.8 | 30.0 | 158.1 | 120.8 |
| Oct-19 | 0.0 | 0.0 | 143.9 | 77.5 |
| Nov-19 | 0.0 | 0.0 | 0.0 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 5.3 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 25, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into

any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

COMPANY CONFIDENTIALITY NOTICE: The information in this e-mail may be confidential and/or privileged and protected by work product immunity or other legal rules. No confidentiality or privilege is waived or lost by mis-transmission. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail and its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your computer system.
COMPANY CONFIDENTIALITY NOTICE: The information in this e-mail may be confidential and/or privileged and protected by work product immunity or other legal rules. No confidentiality or privilege is waived or lost by mis-transmission. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this e-mail and its attachments, if any, or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your computer system.

EXHIBIT: SJCE #47
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-26-2018-SFPUC[1]Re SJCE Request for Offers - 2019 Resource - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-26-2018-SFPUC[1]RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Sole, Jeanne
**Sent:** Friday, October 26, 2018 3:12 PM
**To:** Mulberg, Erin
**Cc:** Morris, Kelly; Mestaz, Jeannette; Hyams, Michael; Tony Zimmer
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Thanks Erin, are you executing first or are we.

Get Outlook for Android

---

**From:** Mulberg, Erin <EMulberg@sfwater.org>
**Sent:** Friday, October 26, 2018 2:04:28 PM
**To:** Sole, Jeanne
**Cc:** Morris, Kelly; Mestaz, Jeannette; Hyams, Michael; Tony Zimmer
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

Apologies for the omission! We've updated the confirm to reflect the following local volumes:

| | | Unit 1 | Unit 2 | TOTAL |
|---|---|---|---|---|
| Contract<br>Month / Year | Greater Bay Area<br>RA Capacity Quantity<br>(MW) | Other PG&E Areas<br>RA Capacity Quantity<br>(MW) | Other PG&E Areas<br>RA Capacity Quantity<br>(MW) | Other PG&E Areas<br>RA Capacity Quantity<br>(MW) |
| Jul-19 | 22 | 20 | 5 | 25 |
| Sep-19 | 22 | - | - | - |
| Oct-19 | 36 | - | - | - |
| Nov-19 | 12 | - | - | - |

I'll be around this afternoon so feel free to call whenever.

Thanks,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Sole, Jeanne [mailto:jeanne.sole@sanjoseca.gov]
**Sent:** Friday, October 26, 2018 1:59 PM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael

<MHyams@sfwater.org>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

I have a meeting but will call you after. Other than these quantity omissions we are OK with the confirms.

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

---

**From:** Sole, Jeanne
**Sent:** Friday, October 26, 2018 1:56 PM
**To:** 'Mulberg, Erin' <EMulberg@sfwater.org>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Erin, the System and System/Flex look good in light of your update about the changes in quantities. The Local is missing 25MW of PG&E Other at 6.5 in July of 2019 and 12MW of GBA in November of 2019 at 4 per my email on 10/19.

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

---

**From:** Mulberg, Erin [mailto:EMulberg@sfwater.org]
**Sent:** Friday, October 26, 2018 10:19 AM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

As we discussed, unfortunately, CleanPowerSF will need to reduce the System RA volumes offered to SJCE in September and October to the following amounts:

Sept: 10 MW
Oct: 54 MW

I've attached a final redline and executable version of the System RA confirm that reflects that volume change; as well as executable copies of the Local and System+Flex Confirms that have been populated with the unit information.

If you agree to the final redline of the System RA confirm we will then partially execute these documents this morning.

Please let me know if you have any questions.

Thanks again for your flexibility and understanding in this process; we look forward to working together in future transactions,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Mulberg, Erin
**Sent:** Wednesday, October 24, 2018 6:40 PM
**To:** 'Sole, Jeanne' <jeanne.sole@sanjoseca.gov>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

Everything is on track, hoping to get you partially executed confirms in the next few days.

Thanks,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Sole, Jeanne [mailto:jeanne.sole@sanjoseca.gov]
**Sent:** Wednesday, October 24, 2018 11:43 AM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Just checking in to make sure everything is on track for Friday, pending approval by our ROC. Let me know if there are any outstanding issues.

**Jeanne M. Solé**
**Deputy Director of Power Resources**
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov

SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

**From:** Sole, Jeanne
**Sent:** Friday, October 19, 2018 5:44 PM
**To:** 'Tony Zimmer' <Tony.Zimmer@ncpa.com>; Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Tony is correct. We had agreed to some purchases previously, and had not gotten back to you about your more recent offer. We would like to buy the Nov. GBA RA included in the more recent offer. To make sure we are all on the same page, I have included below a table of what we have now agreed to buy.

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We just need to get approval from our Risk Oversight Committee (ROC) for the transaction. We will present it along with other outstanding RA deals to our ROC next Friday.

Please let me know if you have any concerns about any of this.

Have a nice weekend!

| | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Totals |
|---|---|---|---|---|---|---|
| CleanPowerSF System (MW-mo) | 54.1 | 0 | 18.1 | 69.1 | 0 | |
| Price $ | 6.5 | 0 | 6.5 | 3.5 | 0 | |
| Total Amount $ | 351650 | 0 | 117650 | 241850 | 0 | 711150 |
| CleanPowerSF System (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| Price $ | 6.6 | 0 | 6.6 | 3.6 | 0 | |
| Total Amount $ | 309540 | 0 | 309540 | 168840 | 0 | 787920 |
| CleanPowerSF Flex (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| CleanPowerSF GBA (MW-mo) | 22 | 0 | 22 | 36 | 12 | |
| Price $ | 6.5 | 0 | 6.5 | 4.5 | 4 | |
| Total Amount $ | 143000 | 0 | 143000 | 162000 | 48000 | 496000 |
| CleanPowerSF PG&E Other (MW-mo) | 25 | 0 | 0 | 0 | 0 | |
| Price $ | 6.5 | 0 | 0 | 0 | 0 | |
| Total Amount $ | 162500 | 0 | 0 | 0 | 0 | 162500 |
| | | | | | | 2157570 |

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov

SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 18, 2018 9:05 PM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Smith, Randall <rsmith@sfwater.org>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Thanks for following up. SJCE would like to purchase the Local GBA amount offered by CleanPower SF. SJCE is re-evaluating it's system need at this time, so they are not prepared to move forward at this time with the system you offered.

Would you like to add the additional GBA volume to the confirm we are currently working on now, or would you like to transact that through a separate confirm?

Please let me know if you have any questions, or if you would like to discuss further.

Thanks,

Tony Zimmer

Sent from my iPhone

On Oct 18, 2018, at 5:15 PM, Mulberg, Erin <EMulberg@sfwater.org> wrote:

> Hi Tony,
>
> Just checking in on CleanPowerSF's bid into SJCE's RFO.
>
> Please let us know if there are any questions!
>
> Thanks,
> Erin
>
> Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Monday, October 15, 2018 11:18 AM
**To:** Power Purchasing <powerpurchasing@sfwater.org>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin (or to Whom It May Concern),

Thank you for submitting your offer. I will review your offer with SJCE, and will work to respond to you promptly.

Best Regards,

Tony Zimmer
Assistant General Manager, Power Management
<image001.jpg>
**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

---

**From:** Power Purchasing <powerpurchasing@sfwater.org>
**Sent:** Monday, October 15, 2018 10:36 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>
**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Power Purchasing <powerpurchasing@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Jeanne and Tony,

Please find attached CleanPowerSF's bid to sell SJCE 2019 Resource Adequacy products. Feel free to reach out with any questions.

Best,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102
<image002.png>

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>; Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

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**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

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SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

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- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

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Disclaimers:

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The address for submitting protests is:

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Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #48
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-26-2018-SFPUC-[2]RE SJCE Request for Offers - 2019 Resource - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-26-2018-SFPUC-[2]RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

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**To:** Mulberg, Erin
**Cc:** Morris, Kelly; Mestaz, Jeannette; Hyams, Michael
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SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

---

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**Sent:** Friday, October 26, 2018 10:19 AM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

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Have a nice weekend!

| | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Totals |
|---|---|---|---|---|---|---|
| CleanPowerSF System (MW-mo) | 54.1 | 0 | 18.1 | 69.1 | 0 | |
| Price $ | 6.5 | 0 | 6.5 | 3.5 | 0 | |
| Total Amount $ | 351650 | 0 | 117650 | 241850 | 0 | 711150 |
| CleanPowerSF System (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| Price $ | 6.6 | 0 | 6.6 | 3.6 | 0 | |
| Total Amount $ | 309540 | 0 | 309540 | 168840 | 0 | 787920 |
| CleanPowerSF Flex (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| CleanPowerSF GBA (MW-mo) | 22 | 0 | 22 | 36 | 12 | |
| Price $ | 6.5 | 0 | 6.5 | 4.5 | 4 | |
| Total Amount $ | 143000 | 0 | 143000 | 162000 | 48000 | 496000 |
| CleanPowerSF PG&E Other (MW-mo) | 25 | 0 | 0 | 0 | 0 | |
| Price $ | 6.5 | 0 | 0 | 0 | 0 | |
| Total Amount $ | 162500 | 0 | 0 | 0 | 0 | 162500 |
| | | | | | | 2157570 |

**Jeanne M. Solé**
**Deputy Director of Power Resources**
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

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**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 18, 2018 9:05 PM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Smith, Randall <rsmith@sfwater.org>
**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Thanks for following up. SJCE would like to purchase the Local GBA amount offered by CleanPower SF. SJCE is re-evaluating it's system need at this time, so they are not prepared to move forward at this time with the system you offered.

Would you like to add the additional GBA volume to the confirm we are currently working on now, or would you like to transact that through a separate confirm?

Please let me know if you have any questions, or if you would like to discuss further.

Thanks,

Tony Zimmer

Sent from my iPhone

On Oct 18, 2018, at 5:15 PM, Mulberg, Erin <EMulberg@sfwater.org> wrote:

> Hi Tony,
>
> Just checking in on CleanPowerSF's bid into SJCE's RFO.
>
> Please let us know if there are any questions!
>
> Thanks,
> Erin
>
> Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

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**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin (or to Whom It May Concern),

Thank you for submitting your offer. I will review your offer with SJCE, and will work to respond to you promptly.

Best Regards,

Tony Zimmer
Assistant General Manager, Power Management
*<image001.jpg>*
**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone

www.ncpa.com

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**Cc:** Mulberg, Erin <EMulberg@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Power Purchasing <powerpurchasing@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Jeanne and Tony,

Please find attached CleanPowerSF's bid to sell SJCE 2019 Resource Adequacy products. Feel free to reach out with any questions.

Best,

Power Purchasing
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102
<image002.png>

**From:** Tony Zimmer [mailto:Tony.Zimmer@ncpa.com]
**Sent:** Thursday, October 11, 2018 6:37 AM
**To:** Tony Zimmer <Tony.Zimmer@ncpa.com>; Jeanne M. Solé <jeanne.sole@sanjoseca.gov>; Morris, Kelly <KELLY.MORRIS@SANJOSECA.GOV>; Ken Goeke <Ken.Goeke@ncpa.com>; Bernard Erlich <Bernard.Erlich@ncpa.com>; Roxana Khayyam <Roxana.Khayyam@ncpa.com>
**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

Prospective Resource Adequacy Suppliers:

Pursuant to this Request for Offers (RFO), San Jose Clean Energy (SJCE) is seeking offers from prospective suppliers to sell Resource Adequacy Products to SJCE as further described herein:

**Product Description**

| Showing Month | System RA Quantity (MW) | Local RA PG&E GBA Quantity (MW) | Local RA PG&E Other Quantity (MW) | Flexible RA Quantity (MW) |
|---|---|---|---|---|
| Jan-19 | 0.0 | 177.0 | 246.9 | 8.0 |
| Feb-19 | 54.0 | 177.0 | 246.9 | 191.0 |
| Mar-19 | 0.0 | 12.0 | 10.1 | 0.0 |

| | | | | |
|---|---|---|---|---|
| Apr-19 | 26.6 | 12.0 | 10.1 | 7.0 |
| May-19 | 35.9 | 12.0 | 10.1 | 8.0 |
| Jun-19 | 21.2 | 12.0 | 10.1 | 1.0 |
| Jul-19 | 427.8 | 0.0 | 56.2 | 51.1 |
| Aug-19 | 27.6 | 12.0 | 10.1 | 0.0 |
| Sep-19 | 588.2 | 30.0 | 158.2 | 147.1 |
| Oct-19 | 111.9 | 0.0 | 148.2 | 99.1 |
| Nov-19 | 0.0 | 12.0 | 10.1 | 0.0 |
| Dec-19 | 0.0 | 12.0 | 10.1 | 0.0 |

**Submission of Offers**

Please submit all offers to sell Resource Adequacy Products to SJCE using the RA Offer Form attached hereto.

**All offers to sell Resource Adequacy Products must be submitted to the following SJCE contacts on or prior to October 15, 2018 at 5:00 PM Pacific**:

- Jeanne Sole (SJCE): jeanne.sole@sanjoseca.gov
- Tony Zimmer (NCPA): tony.zimmer@ncpa.com

Upon receipt of any offers submitted in response to this RFO, SJCE will evaluate such offers and determine if SJCE will seek to enter into any confirmation for a transaction at the conclusion of this solicitation.

**Contracting Instrument**

For reference, please find attached hereto SJCE's preferred form of Resource Adequacy Transaction Confirmation for use with the WSPP. SJCE will also consider use of a Resource Adequacy Transaction Confirmation structured to work in conjunction with an EEI to be negotiated between the parties. Please find attached hereto SJCE's preferred EEI cover sheet.

In addition, SJCE is in the process of qualifying potential counterparties pursuant to its Risk Management Policies. Potential suppliers that are not yet qualified are encouraged to contact SJCE as soon as possible if they intend to respond to this Request for Proposals. SJCE will only be able to transact with entities that have been qualified by its finance department.

If a prospective supplier does not disclose financial information publicly, SJCE will also require a prospective supplier to provide the information described below for the past two (2) financial years. Also, a prospective supplier with its primary business in sectors other than energy should provide financial information and a description of its energy product operations and trading.

- Consolidated Statement of Income
- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations
- Notes to Financial Statements

- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

Disclaimers:

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this solicitation for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this solicitation. SJCE reserves the right to modify the terms and conditions of this solicitation at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this solicitation at any time prior to SJCE's execution of a binding agreement. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this solicitation.

If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

EXHIBIT: SJCE #49
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-26-2018-SFPUC[3]RE SJCE Request for Offers - 2019 Resource Adequacy Products -CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-26-2018-SFPUC[3]RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

# CONFIDENTIAL

**From:** Mulberg, Erin <EMulberg@sfwater.org>
**Sent:** Friday, October 26, 2018 2:04 PM
**To:** Sole, Jeanne
**Cc:** Morris, Kelly; Mestaz, Jeannette; Hyams, Michael; Tony Zimmer
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products
**Attachments:** CleanPowerSF-SJCE_2019 RA Confirm_Local_Executable (10-26-2018).docx

Hi Jeanne,

Apologies for the omission! We've updated the confirm to reflect the following local volumes:

| | | Unit 1 | Unit 2 | TOTAL |
|---|---|---|---|---|
| Contract<br>Month / Year | Greater Bay Area<br>RA Capacity Quantity (MW) | Other PG&E Areas<br>RA Capacity Quantity (MW) | Other PG&E Areas<br>RA Capacity Quantity (MW) | Other PG&E Areas<br>RA Capacity Quantity (MW) |
| Jul-19 | 22 | 20 | 5 | 25 |
| Sep-19 | 22 | - | - | - |
| Oct-19 | 36 | - | - | - |
| Nov-19 | 12 | - | - | - |

I'll be around this afternoon so feel free to call whenever.

Thanks,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Sole, Jeanne [mailto:jeanne.sole@sanjoseca.gov]
**Sent:** Friday, October 26, 2018 1:59 PM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

I have a meeting but will call you after. Other than these quantity omissions we are OK with the confirms.

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113

408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

---

**From:** Sole, Jeanne
**Sent:** Friday, October 26, 2018 1:56 PM
**To:** 'Mulberg, Erin' <EMulberg@sfwater.org>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Erin, the System and System/Flex look good in light of your update about the changes in quantities. The Local is missing 25MW of PG&E Other at 6.5 in July of 2019 and 12MW of GBA in November of 2019 at 4 per my email on 10/19.

**Jeanne M. Solé**
Deputy Director of Power Resources
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408.535.4867 | Jeanne.Sole@sanjoseca.gov
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---

**From:** Mulberg, Erin [mailto:EMulberg@sfwater.org]
**Sent:** Friday, October 26, 2018 10:19 AM
**To:** Sole, Jeanne <jeanne.sole@sanjoseca.gov>
**Cc:** Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Hyams, Michael <MHyams@sfwater.org>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

As we discussed, unfortunately, CleanPowerSF will need to reduce the System RA volumes offered to SJCE in September and October to the following amounts:

Sept: 10 MW
Oct: 54 MW

I've attached a final redline and executable version of the System RA confirm that reflects that volume change; as well as executable copies of the Local and System+Flex Confirms that have been populated with the unit information.

If you agree to the final redline of the System RA confirm we will then partially execute these documents this morning.

Please let me know if you have any questions.

Thanks again for your flexibility and understanding in this process; we look forward to working together in future transactions,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

**From:** Mulberg, Erin
**Sent:** Wednesday, October 24, 2018 6:40 PM
**To:** 'Sole, Jeanne' <jeanne.sole@sanjoseca.gov>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

Everything is on track, hoping to get you partially executed confirms in the next few days.

Thanks,
Erin

Erin Mulberg | Origination & Power Supply, SFPUC Power Enterprise| (415) 551-4598 | emulberg@sfwater.org

---

**From:** Sole, Jeanne [mailto:jeanne.sole@sanjoseca.gov]
**Sent:** Wednesday, October 24, 2018 11:43 AM
**To:** Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Just checking in to make sure everything is on track for Friday, pending approval by our ROC. Let me know if there are any outstanding issues.

**Jeanne M. Solé**
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov
SAN JOSE CLEAN ENERGY
SanJoseCleanEnergy.org

---

**From:** Sole, Jeanne
**Sent:** Friday, October 19, 2018 5:44 PM
**To:** 'Tony Zimmer' <Tony.Zimmer@ncpa.com>; Mulberg, Erin <EMulberg@sfwater.org>
**Cc:** Power Purchasing <powerpurchasing@sfwater.org>; Smith, Randall <rsmith@sfwater.org>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>
**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Erin,

Tony is correct. We had agreed to some purchases previously, and had not gotten back to you about your more recent offer. We would like to buy the Nov. GBA RA included in the more recent offer. To make sure we are all on the same page, I have included below a table of what we have now agreed to buy.

We had agreed on confirmations for the initial purchases. I have added the November GBA RA to the Local RA confirmation and attached all three confirmations just to have everything in one place.

We just need to get approval from our Risk Oversight Committee (ROC) for the transaction. We will present it along with other outstanding RA deals to our ROC next Friday.

Please let me know if you have any concerns about any of this.

Have a nice weekend!

| | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Totals |
|---|---|---|---|---|---|---|
| CleanPowerSF System (MW-mo) | 54.1 | 0 | 18.1 | 69.1 | 0 | |
| Price $ | 6.5 | 0 | 6.5 | 3.5 | 0 | |
| Total Amount $ | 351650 | 0 | 117650 | 241850 | 0 | 711150 |
| CleanPowerSF System (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
| Price $ | 6.6 | 0 | 6.6 | 3.6 | 0 | |
| Total Amount $ | 309540 | 0 | 309540 | 168840 | 0 | 787920 |
| CleanPowerSF Flex (MW-mo) | 46.9 | 0 | 46.9 | 46.9 | 0 | |
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| CleanPowerSF PG&E Other (MW-mo) | 25 | 0 | 0 | 0 | 0 | |
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| Total Amount $ | 162500 | 0 | 0 | 0 | 0 | 162500 |
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**Subject:** Re: SJCE Request for Offers - 2019 Resource Adequacy Products

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Tony Zimmer

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**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

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Assistant General Manager, Power Management
*<image001.jpg>*
**Northern California Power Agency**
*A Public Agency*
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Roseville, CA 95678-6420

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**Subject:** RE: SJCE Request for Offers - 2019 Resource Adequacy Products

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**Subject:** SJCE Request for Offers - 2019 Resource Adequacy Products
**Importance:** High

**Date Issued: October 11, 2018**

**Subject: Request for Offers to Sell CY 2019 Resource Adequacy Products to SJCE**

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**Submission of Offers**

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- Consolidated Statement of Cash Flows
- Consolidated Balance Sheets
- Results of Operations

- Notes to Financial Statements
- Off-Balance Sheet Liabilities, if any

For any questions regarding this RFO, please contact Tony Zimmer at tony.zimmer@ncpa.com.

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If an unsuccessful PROPOSER wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful PROPOSER(s), detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:

Attention: Lori Mitchell, Director
City of San Jose, Department of Community Energy
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

Please submit an electronic version of the protest to lori.mitchell@sanjoseca.gov, and Jeanne.sole@sanjoseca.gov

Tony Zimmer
Assistant General Manager, Power Management

**Northern California Power Agency**
*A Public Agency*
651 Commerce Drive
Roseville, CA 95678-6420
(916) 781-4229 Phone
www.ncpa.com

**MASTER POWER PURCHASE AND SALE AGREEMENT**
**CONFIRMATION LETTER**
**BETWEEN**
**CITY OF SAN JOSÉ**
**AND**
**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF**

This confirmation letter ("Confirmation") confirms the Transaction between the **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** ("Seller") and **City of San José, a California municipality** ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 26, 2018 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

## ARTICLE 1
## DEFINITIONS

**1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

**1.2** "Availability Incentive Payments" has the meaning set forth in the Tariff.

**1.3** "Availability Standards" has the meaning set forth in the Tariff.

**1.4** "Buyer" has the meaning specified in the introductory paragraph hereof.

**1.5** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

**1.6** "Confirmation" has the meaning specified in the introductory paragraph hereof.

**1.7** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

**1.8** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

**1.9** "Contract Price" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

**1.10** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

**1.11** "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.

**1.12** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program.

**1.13** "Delivery Period" has the meaning specified in Section 4.1 hereof.

**1.14** "Delivery Point" has the meaning specified in Section 4.2 hereof.

**1.15** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

**1.16** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

**1.17** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.18** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

**1.19** "Firm RA Product" has the meaning specified in Section 3.3 hereof.

**1.20** "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.21** "Flexible RA Product" has the meaning specified in Section 3.2 hereof.

**1.22** "GADS" means the Generating Availability Data System or its successor.

**1.23** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

**1.24** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

**1.25** "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the Tariff, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

**1.26** "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other

Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.27** "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

**1.28** "LRA" means Local Regulatory Authority, as defined in the Tariff.

**1.29** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**1.30** "Master Agreement" has the meaning specified in the introductory paragraph hereof.

**1.31** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

**1.32** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

**1.33** "NERC" means the North American Electric Reliability Council, or its successor.

**1.34** "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

**1.35** "Net Qualifying Capacity" has the meaning set forth in the Tariff.

**1.36** "Non-Availability Charges" has the meaning set forth in the Tariff.

**1.37** "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

**1.38** "Outage Schedule" has the meaning specified in Article 6 hereof.

**1.39** "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

**1.40** "Product" has the meaning specified in Article 3 hereof.

**1.41** "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 100%.

**1.42** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

**1.43** "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

**1.44** "RAR" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

**1.45** "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, CAISO, LRA,

or any Governmental Body having jurisdiction that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

**1.46** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.

**1.47** "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

**1.48** "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

**1.49** "Resource Adequacy Plan" has the meaning set forth in the Tariff.

**1.50** "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**1.51** "RMR Agreement" has the meaning set forth in the Tariff.

**1.52** "San José Clean Energy" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

**1.53** "Seller" has the meaning specified in the introductory paragraph hereof.

**1.54** "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

**1.55** "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

**1.56** "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures, and business practice manuals, as amended or supplemented from time to time.

**1.57** "Transaction" has the meaning specified in the introductory paragraph hereof.

**1.58** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

**1.59** "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitations and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

**1.60** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the

Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2
## UNIT INFORMATION

| | | Unit 1 | Unit 2 |
|---|---|---|---|
| | **Greater Bay Area – Local Resource Adequacy** | **Other PG&E Areas – Local Resource Adequacy** | **Other PG&E Areas – Local Resource Adequacy** |
| Name | Delta Energy Center | Geysers Unit 20 | Colgate Powerhouse Unit 1 |
| Location | Pittsburg, CA | Sonoma County, CA | Dobbins, CA |
| CAISO Resource ID | DELTA_2_PL1X4 | GEYS20_7_UNIT20 | COLGAT_7_UNIT 1 |
| Resource Type | I_Phys_Res | I_Phys_Res | I_Phys_Res |
| Resource Category (1, 2, 3, or 4) | 4 | 4 | 4 |
| Point of Interconnection with the CAISO controlled grid ("Substation") | Pittsburg 230 kV Substation | Geysers #9-Lakeville | N/A |
| Path 26 (North, South, or None) | North | North | North |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | None | None | None |
| Run Hour Restrictions | None | None | None |
| LAR Attributes (Yes/No) | Yes | Yes | Yes |
| If yes: Local Capacity Area (as of the Confirmation Effective Date): | Greater Bay Area | Other PG&E Areas | Other PG&E Areas |
| Product Type | Flexible | Generic | Generic |
| If Generic: Unit NQC (as of the Confirmation Effective Date) | Varies by month | 40 | Varies by month |
| If Flexible: Unit EFC (as of the Confirmation Effective Date): Flexible Capacity Category (Base/Peak/Super-peak): | Varies by month | N/A | Varies by month |

## ARTICLE 3
## RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### 3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

### 3.2 ☐ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

### 3.3 ☐ Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

### 3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then Seller may either reduce the Contract Quantity or provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

## ARTICLE 4
## DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be July 1, 2019 through July 31, 2019; September 1, 2019 through September 30, 2019; and October 1, 2019 through October 31, 2019 inclusive.

### 4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

**4.3 Contract Quantity**

The Contract Quantity of each Unit for the Delivery Period shall be:

**Contract Quantity (MWs)**

| | | Unit 1 | Unit 2 |
|---|---|---|---|
| **Contract Month / Year** | **Greater Bay Area RA Capacity Quantity (MW)** | **Other PG&E Areas RA Capacity Quantity (MW)** | **Other PG&E Areas RA Capacity Quantity (MW)** |
| July 2019 | 22.00 | 20.00 | 5.00 |
| September 2019 | 22.00 | - | - |
| October 2019 | 36.00 | - | - |
| November 2019 | 12.00 | - | - |

**4.4 Adjustments to Contract Quantity**

(a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit NQC was reduced since the Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MWs) Unit EFC was reduced since the Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC,

then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

**4.5 Alternate Capacity and Replacement Units**

a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**4.6 Delivery of Product**

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to CAISO and identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than fifteen (15) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

(c) Once the Buyer's Resource Adequacy Plan and Seller's Supply Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for Unit in any Showing Month, the Parties will confer, make

such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

### 4.7 Damages for Failure to Provide or Receive Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in the Master Agreement, the following damages in lieu of damages specified in the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

### 4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity before delivery as required under Section 4.6;

(c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to

pay the foregoing amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.

### 4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**RA CAPACITY FLAT PRICE TABLE**

| Contract Year/Month | Greater Bay Area RA Capacity Flat Price ($/kW-month) | Other PG&E Areas RA Capacity Flat Price ($/kW-month) |
|---|---|---|
| July 2019 | $6.50 | $6.50 |
| September 2019 | $6.50 | - |
| October 2019 | $4.50 | - |
| November | $4.00 | - |

If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

### 4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## ARTICLE 5
## CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 6
## PLANNED OUTAGES

**6.1** Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2018) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Delivery Period ("Outage Schedule"). Seller or a Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

**6.2** Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

## ARTICLE 7
## OTHER BUYER AND SELLER COVENANTS

**7.1** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by

the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

**7.2** Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(g) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(h) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity

(i) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

(j) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 8
## CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, If either Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to either Party under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of the other Party, the Party subject to the request may do so after

providing the other Party with prompt notice so that such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

## ARTICLE 9
## BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

## ARTICLE 10
## COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

## ARTICLE 11
## GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws.

## ARTICLE 12
## COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect the performance under this Confirmation ("Applicable Law") and must at all times comply with Applicable Law as it may be amended from time to time.

## ARTICLE 13
## ADDITIONAL TERMS AND CONDITIONS

### 13.1 Limited Obligations

Seller's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco ("City") or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

### 13.2 Guaranteed Maximum Cost

(a) Controller Certification. Seller's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Seller are not authorized to request, and Seller is not required to reimburse Buyer for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the Seller are not authorized to offer or promise, nor is Seller required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Biannual Budget Process. For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, Seller agrees to take all necessary actions to include the maximum amount of its annual payment obligations under this Confirmation in

its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

### 13.3 Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Buyer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Confirmation. Buyer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Buyer violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Confirmation, and (ii) prohibit Buyer from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Buyer's use of profit as a violation of this Section.

### 13.4 Designated Fund and Limited Obligations

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the designated fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy designated fund during the Term.

(b) Limited Obligations. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of San José Clean Energy. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### 13.5 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

### 13.6 Entire Agreement; No Oral Agreements or Modifications

This Confirmation and the WSPP Agreement set forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

| | |
|---|---|
| **City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF** | **City of San José, a California municipality** |
| By: _____ | By: _____ |
| Name: Michael Hyams | Name: _____ |
| Title: Director, CleanPowerSF | Title: _____ |
| Date: _____ | Date: _____ |

EXHIBIT: SJCE #50
CPUC PROCEEDING: K.19-03-024
SPONSOR/WITNESS: SJCE/JEANNE M. SOLE/ 10-26-RE SJCE Request for Offers - 2019 Resource Adequacy Products - CONFIDENTIAL
DATE IDENT. 04/22/25 RECD. 04/22/25
ALJ: GERALD F. KELLY

# 10-26-RE SJCE REQUEST FOR OFFERS - 2019 RESOURCE ADEQUACY PRODUCTS - CONFIDENTIAL

in Support of the Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division Before the Public Utilities Commission of the State of California

CONFIDENTIAL

**From:** Sole, Jeanne
**Sent:** Thursday, March 21, 2019 4:27 PM
**To:** Sole, Jeanne
**Subject:** FW: SJCE Request for Offers - 2019 Resource Adequacy Products

-----Original Message-----
From: Moises Melgoza [mailto:MMelgoza@SantaClaraCA.gov]
Sent: Friday, October 26, 2018 2:03 PM
To: Sole, Jeanne <jeanne.sole@sanjoseca.gov>; Hall, Stephen C. <Steve.Hall@troutman.com>; Yanmei Qiu <yqiu@SantaClaraCA.gov>
Cc: Peter Virasak <PVirasak@SantaClaraCA.gov>; Tony Zimmer <Tony.Zimmer@ncpa.com>; Saul Lopez <SLopez@SantaClaraCA.gov>; Morris, Kelly <Kelly.Morris@sanjoseca.gov>; Moran, Ed <Ed.Moran@sanjoseca.gov>; Mestaz, Jeannette <jeanette.mestaz@sanjoseca.gov>
Subject: RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi Jeanne,

I think there may have been a misunderstanding when I mentioned that all we had left was the 20MW in July back on October 19. We no longer have October available. On 11.2, I believe our City Attorney missed this section as the addition was in the email and they did not see it in the agreement itself. Separately we can offer 6MW in June at $5.50. If this works for you I can update the agreement to include the additional 6MW in June.

Please let me know if this works for you.

Best regards,

Moisés Melgoza
Email:mmelgoza@svpower.com
Direct: 408-615-6656

-----Original Message-----
From: Sole, Jeanne [mailto:jeanne.sole@sanjoseca.gov]
Sent: Friday, October 26, 2018 1:12 PM
To: Hall, Stephen C.; Yanmei Qiu; Moises Melgoza
Cc: Peter Virasak; Tony Zimmer; Saul Lopez; Morris, Kelly; Moran, Ed; Mestaz, Jeannette
Subject: RE: SJCE Request for Offers - 2019 Resource Adequacy Products

Hi all:

Thank you for finalizing the details. Two things:

1) The quantities do not reflect the 40MW of GBA that we agreed to purchase in October 2019 for $4.25 kw-mo. Please update the tables in 4.3 and 4.9 to reflect this.

2) The table in Article 2 needs to be filled.

With those additional changes Steve's clean document can be executed. (Please note that I had sent the additional language in Section 11.2 to Moises on 10/24 and I understood we had agreement on it.)

Please let me know what the process/timing is to execute. Lori Mitchell who must execute on our behalf will not be here Monday. She will be here Tuesday but it would be great if we can get this done today.

Thanks for your help!

Jeanne M. Solé
Deputy Director of Power Resources
200 E. Santa Clara St., 14th Floor | San José, CA 95113
408.535.4867 | Jeanne.Sole@sanjoseca.gov

SanJoseCleanEnergy.org